

REPORT

OF THE

ATTORNEY - GENERAL

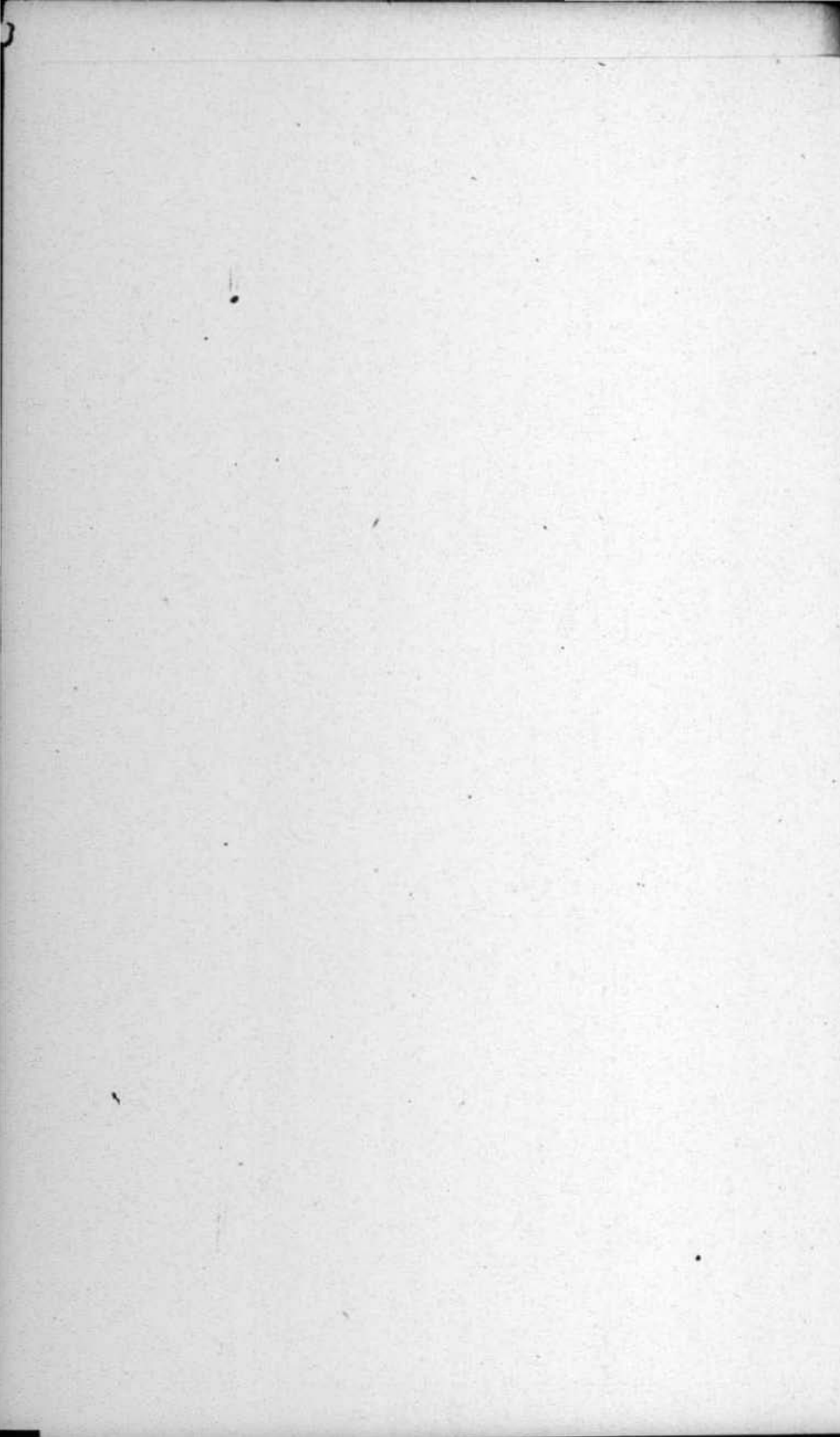
OF THE

STATE OF FLORIDA



FROM

February 15, 1904, to January 1, 1905.



ATTORNEY-GENERAL'S REPORT.

State of Florida.

Attorney General's Office,
Tallahassee, March, 1905.

To His Excellency, Napoleon B. Broward,
Governor of Florida.

Sir—Pursuant to a custom which has prevailed in this State for many years, and in obedience to the requirements of the Constitution and laws, I herewith submit a report of the business transacted by this department, from the 15th day of February, 1904 to January 1st, 1905; together with such suggestions as to needed legislation, as commend themselves to me.

I assumed the duties of the office of Attorney General, on the 15th day of February, 1904. It has been my effort to discharge the duties of this office, also to subserve, when requested, the interests of the public throughout the State, as to some matters which do not pertain to the duties of this department.

The correspondence of this office for the past twelve months has been very large, a great portion of it consists of communications from officials of cities, counties and towns, and in many cases, from private citizens. These communications required of the Attorney General, opinions upon many different subjects, some affecting solely the private business affairs of the writer. This custom of propounding questions to the Attorney General has been practiced in this State for many years, and although the law does not require that officer to furnish the opinions sought, I have, nevertheless endeavored to answer all letters and have given as much time and attention to this feature of the work as the clerical force of this office would permit. I have endeavored to impress upon those who have thus sought opinions from me, that they could not be regarded as official, that they were binding upon no one and amounted merely to my opinion as a lawyer.

The clerical force of this office is by no means sufficient, if the custom above referred to, continues. I wish to add, that, to a large extent the communications come

from county officials. Many counties have no legal adviser and the county officials of those counties have no one to look to but the Attorney General for advice, as to their manifold duties; to disregard their requests therefore, would create great dissatisfaction; to attend to them, adds an immense amount of work to the regular duties of this office. I have incorporated in this report, such of the replies to these unofficial communications as I deem to be of general interest; they represent a very small part of the correspondence.

REPORTS FROM STATE ATTORNEYS.

On December the 22, 1904, I addressed the following letter to the State Attorneys:

Tallahassee, Fla., December 22nd, 1904.

Dear Sir—During the short time I have had the honor of occupying the position in the State government which I now hold, the necessity for periodical reports from the State Attorneys to the Attorney General has become apparent to my mind. Three or four cases, in which writs of error were taken and never perfected and which have recently been brought to my attention, seem to imperatively require the enforcement of Section 91, of the Revised Statutes.

There are also other reasons why these reports should be made, they would furnish this office with valuable data concerning prosecutions in the Circuit Courts of the State and would show the character of service rendered by the State Attorneys.

I have prepared a form upon which the reports are to be made, it is rather crude but I hope to perfect it with the assistance of you gentlemen, upon whose efforts so much of the administration of the criminal laws of the State depends.

I am sending under separate cover twelve blanks.

Designate upon your reports the race to which the defendant belongs.

I hope you will aid me in this matter and make prompt reports at the expiration of each quarter. Let your first report be made January 1st, 1905, for the quarter beginning October 1st, 1904.

Yours very truly,

W. H. ELLIS,
Attorney General.

In response thereto, with one exception, they have forwarded to this office full reports for the quarter beginning October 1st, 1904. I also addressed a similar communication to the Prosecuting Attorneys of the Criminal Courts of Record in this State.

CIVIL CASES.

The case of the Central Trust Company of New York, vs. A. C. Croom, Comptroller, which was pending on the 15th day of February, 1904, in the United States Court for the Northern District of Florida, was settled in December, 1904. This suit was a continuation of the "Railroad Back Tax Case."

An injunction had been issued and served restraining the Comptroller from selling the lines of railroad involved, for the State and county taxes of 1879, 1880 and 1881. An answer and replication had been filed. The evidence was agreed upon, and at the proper time the cause set down for a hearing upon the merits. Thereupon in December, the Railroad Company paid the amount involved and all court costs.

The case of J. J. Kittel vs. The Trustees of the Internal Improvement Fund has been dismissed.

The case of the Railroad Commission against the Louisville and Nashville Railroad Company is still pending.

On March 7, 1904, suit was instituted by the Railroad Commissioners upon petition for writs of mandamus, against the following named Railroad Companies, to put into operation and effect over their lines of railroads, which were wholly or in part within the State, the rate prescribed by order of the Railroad Commissioners, for the transportation of phosphate from points in the State of Florida, to points within the State: Atlantic Coast Line Railroad Co., the Seaboard Air Line Railway, and the Jacksonville and South Western Railroad Co. Demurrers were filed to the alternative writs, and were overruled. Returns were then made to the alternative writs, issue joined, and the cases tried in October, 1904, with the result that a peremptory writ was awarded in each case. The Railroads have taken the cases, upon writs of error to the Supreme Court of the United States. 37 So. Rep. 652-658.

In July, 1904, Moses Guyton, Clerk of the Circuit Court for Jackson County, applied to the Supreme Court by petition for a writ of mandamus to compel A. C. Croom, Comptroller, to honor a requisition for money with which to pay jurors and witnesses before the Grand Jury. The court decided that witnesses before the grand jury should be paid by the State and the requisition should be honored. The question then arose as to whether the Governor should countersign the order of the Comptroller, before the State Treasurer should disburse the money. The Treasurer refused to disburse the money until the Governor signed the order. Mr. Guyton, thereupon applied for a writ of mandamus to compel the Treasurer to disburse the money for the purpose mentioned. The court held that the Governor's signature was necessary to justify the Treasurer in disbursing the funds. 37 So. Rep. 303-307.

QUO WARRANTO, MANDAMUS AND INJUNCTION.

Authority was given by the Attorney General to the gentlemen whose names are mentioned in the following correspondence to institute proceedings in the name of the State, in Quo Warranto, Mandamus and Injunction. The correspondence in each case follows:

Pensacola, Fla., March 23, 1904.

Hon. W. H. Ellis,

Attorney General,

Tallahassee, Fla.

Dear Sir—We desire to obtain your permission, as Attorney General, to file a bill in equity against the City of Pensacola and certain officials, to restrain the digging away of certain streets of the City.

We were about to file a bill in behalf of our client, at whose instance we are now making this application to you. Upon consideration, however, we came to the conclusion that under the decisions of our Supreme Court we could only obtain relief by means of a bill filed by the Attorney General, and are therefore making the application to you, which we trust you will grant.

Of course the proceedings will be without expense to the State. We are enclosing bill that we intended to file as showing the ground of our complaint and the relief

that we expect to get. The case is quite urgent, and we would like to hear from you at your earliest convenience. We want, if possible, to file the bill next Saturday.

Yours very truly,
AVERY & AVERY.

(1 Enclosure.)

Tallahassee, Fla., March 31, 1904.

Messrs. Avery and Avery,
Attorneys-at-Law,
Pensacola, Florida.

Gentlemen—You are hereby authorized to file a bill in equity in the name of the Attorney General against the City of Pensacola and certain officials, to restrain the digging away of certain streets in said city; Provided, That the State of Florida shall not be liable for, nor pay any cost or expenses in the premises, incurred either by the plaintiff or the defendant, and whether the judgment be for the plaintiff or for the defendant.

Respectfully,
W. H. ELLIS,
Attorney General.

Pensacola, Florida, Oct. 26th, 1904.

Hon. W. H. Ellis,
Attorney General,
Tallahassee, Florida.

Dear Sir—Some of our white citizens here residing in Election District, No. 13, in the City of Pensacola, desire me to institute Quo Warranto or some other proceeding to break up a colored organization who are now engaged in the saloon business and have become very annoying to those residing near the said saloon, and I desire authority to proceed against them in the name of the State &c.

This organization was incorporated a few months ago by the Circuit Judge not for profit as the "Baymen Protective Association No. 2" and have applied for and obtained a license to sell liquors, wines and beers in said precinct as the "Baymen Protective Association No. 2" and are now conducting a saloon business under said name, selling cigars and liquors, therefore usurping the privileges granted them by their charter, which should be revoked.

I enclose you a certified copy of their charter and the order of the judge made in the cause, also affidavit that business is conducted there.

Kindly let me hear from you as soon as convenient, and advise me as to what in your opinion will be the proper procedure and oblige,

Yours truly,

C. M. JONES,

Attorney-at-Law.

Tallahassee, Fla., November 5, 1904.

Mr. C. M. Jones,

Attorney-at-Law,

Pensacola, Fla.

Sir—You are hereby authorized to file a petition for a writ of Quo Warranto in the name of the Attorney General of the State of Florida against "The Baymen Protective Association No. 2," a corporation located in the city of Pensacola, Florida, to enquire into the authority of said corporation to further exercise its franchise having forfeited the same by misuse and abuse.

Provided that the State of Florida shall not be liable for, nor pay any costs or expenses in the premises incurred, either by the plaintiff or defendant and whether the judgment be for the plaintiff or defendant.

W. H. ELLIS,

Attorney General.

Tampa, Florida, July 3, 1904.

Hon. W. H. Ellis,

Tallahassee, Fla.

My Dear Sir—Mr. M. G. Gibbons, of the firm of Gunby & Gibbons, with whom I am associated, together with Mr. T. E. Lucas, will leave for Tallahassee tomorrow for the purpose of getting your assistance in applying to the Supreme Court for a writ of mandamus against Darwin B. Givens, Clerk of the Circuit Court of Hillsborough County, requiring Mr. Givens to turn over to Mr. Dan J. Galvin, the Governor's appointee, possession of the office of clerk.

Our former clerk, Mr. Hanks, as you probably know, died on the 7th of May, and Judge Wall under section 1393 of the revised statutes appointed Givens clerk ad interim. Afterwards Governor Jennings appointed Galvin, who was duly commissioned as clerk for the unexpired term. Givens refused to turn over the office to

Mr. Galvin and in accordance with the Governor's commission, and under the principles governing the case of the State of Florida vs. Johnson, we desire to get you to apply to the Supreme Court for a writ of mandamus against Givens requiring him to turn over possession of the office to Galvin.

Givens action is a clear attempt to usurp the office together with its emoluments, until after the term of office has expired. Givens claims that if the matter comes up before the Circuit Court, and a decision is rendered against him, he will appeal to the Supreme Court and get a supersedeas which will delay the final hearing of the matter until January.

In addition to this the Court will have to pass on the order of appointment made by Judge Wall, and it would be better that some other court than the one who made it should pass on it. It seems to me that it would be absolutely impossible to get a stronger case to appeal to the assistance of the Attorney General to get the Supreme Court to exercise original jurisdiction in the matter.

I will sincerely appreciate any assistance you may render us in this matter. With kind regards, I remain,

Yours very truly,

F. M. SIMONTON.

Tallahassee, Fla., July 5th, 1904.

Messrs. Gunby & Gibbons,

F. M. Simonton,

T. E. Lucas,

Attorneys-at-Law,

Tampa, Fla.

Gentlemen—You are hereby authorized to institute in the Supreme Court of the State of Florida a proceeding in Mandamus in the name of the Attorney General against Darwin B. Givens to require the said Givens to surrender to Daniel J. Galvin possession of the office of Clerk of the Circuit Court for the County of Hillsborough, State of Florida, together with all the books, papers, records, seals, files and property of every description belonging or appertaining to said office which are now in the possession of the said Darwin B. Givens. Provided that the State of Florida shall not be liable for nor pay, any cost or expense in the premises incurred

therein by the plaintiff or defendant and whether the judgment be for the plaintiff or defendant.

Very respectfully,

W. H. ELLIS,
Attorney General.

CRIMINAL CASES DISPOSED OF.

W. H. Wilson, vs. The State of Florida; January term, 1904; Offense, Embezzlement; Criminal Court of Record, Hillsborough County. Disposition, Affirmed April 5, 1904. 36 So. Rep. 580.

Geo. L. Markey, vs. The State of Florida; January term, 1904; Offense, Perjury; Circuit Court, Hamilton County. Disposition, Reversed June 4, 1904. 37 So. Rep. 53.

Geo. Alford, vs. The State of Florida; January term, 1904; Offense, Arson; Criminal Court of Record, Escambia County. Disposition, Reversed, April 5, 1904. 36 So. Rep. 437.

J. F. O'Berry, vs. The State of Florida; January term, 1904; Offense, Larceny; Circuit Court, Brevard County. Disposition, Reversed, April 5, 1904. 36 So. Rep. 440.

Hugh Pyke, vs. The State of Florida; January term, 1904; Offense, Assault with intent to murder; Criminal Court of Record, Duval County. Disposition, Affirmed, April 5, 1904. 36 So. Rep. 577.

Fred Ewert, vs. The State of Florida; January term, 1904; Offense, Murder in the first degree; Circuit Court, Monroe County. Disposition, Affirmed, July 21, 1904. 37 So. Rep. 334.

Alex Webster, vs. The State of Florida; January term, 1904; Offense, Murder in the first degree; Circuit Court, Bradford County. Disposition, Reversed, April 5, 1904. 36 So. Rep. 584.

Julius Brown, vs. The State of Florida; January term, 1904; Offense, Perjury; Criminal Court of Record, Escambia County. Disposition, Reversed, May 3, 1904. 36 So. Rep. 705.

Charles Gibson, vs. The State of Florida; January term, 1904; Offense, Perjury; Criminal Court of Record, Escambia County. Disposition, Reversed, May 3, 1904. 36 So. Rep. 706.

Jeff Whitehead, vs. The State of Florida; January term, 1904; Offense, Lewd and lascivious cohabitation; Circuit Court, Jackson County. Disposition, Reversed, July 21, 1904. 37 So. Rep. 302.

Ex Parte, Sam Bush, vs. The State of Florida; January term, 1904; Habeas Corpus. Disposition, Affirmed, July 6, 1904. 37 So. Rep. 177.

Walter Nichols, vs. The State of Florida; January term, 1904; Offense, Assault with intent to murder; Circuit Court, Jackson County. Disposition, Affirmed, July 19, 1904. 37 So. Rep. 312.

Hamilton Griffin, vs. The State of Florida; January term, 1904; Offense, Assault with intent to murder; Criminal Court of Record, Monroe County. Disposition, Affirmed, July 13, 1904. 37 So. Rep. 209.

James Schley, vs. The State of Florida; June term, 1904; Offense, Murder in the first degree; Circuit Court, Walton County. Disposition, Affirmed, October 13, 1904. 37 So. Rep. 518.

Will Williams, (alias, Bill Bailey) vs: The State of Florida; June term 1904; Offense, Breaking and entering with intent to commit a misdemeanor; Circuit Court, Santa Rosa County. Disposition, Affirmed, October 13, 1904. 37 So. Rep. 525.

Oscar Bird, vs. The State of Florida; June term, 1904; Offense, Larceny; Circuit Court, Jefferson County. Disposition, Reversed, October 13, 1904. 37 So. Rep. 525.

Chas. Adkinson, vs. The State of Florida; June term, 1904; Offense, Breaking and entering with intent to commit a misdemeanor; Circuit Court, Walton County. Disposition, Reversed, October 13, 1904. 37 So. Rep. 522.

Alexander Surrency, vs. The State of Florida; June term, 1904; Offense, Murder in the second degree; Circuit Court, DeSoto County. Disposition, Affirmed, October 13, 1904. 37 So. Rep. 575.

M. W. Eatman, vs. The State of Florida; June term, 1904; Offense, Embezzlement; Criminal Court of Record, Volusia County. Disposition, Reversed, November 30, 1904. 37 So. Rep. 576.

Andy Harmon, vs. The State of Florida; June term, 1904; Offense, Assault with intent to murder; Circuit Court, Washington County. Disposition, Affirmed, October 13, 1904. 37 So. Rep. 520.

Lafayette Clemons, vs. The State of Florida; June term, 1904; Offense, Murder in the first degree; Circuit Court, Duval County. Disposition, Affirmed, November 20, 1904. 37 So. Rep. 647.

O. P. Smith, vs. The State of Florida; June term, 1904; Offense, Murder in the first degree; Circuit Court, Madison County. Disposition, Affirmed, November 5, 1904. 37 So. Rep. 573.

Jerry M. Dorman, vs. The State of Florida; June term, 1904; Offense, Manslaughter; Circuit Court, Baker County. Disposition, Affirmed, November 1, 1904. 37 So. Rep. 561.

Emmett Washington, vs. The State of Florida; June term, 1904; Offense, Rape; Circuit Court, Washington County. Disposition, Affirmed, October 13th, 1904. 37 So. Rep. 573.

CRIMINAL CASES PENDING.

W. L. Taylor, vs. The State of Florida; January term, 1904; Offense, Assault with intent to murder; Circuit Court, Leon County.

Simon Reyes, vs. The State of Florida; June term, 1904; Offense, Murder; Circuit Court, Monroe County.

A. J. Wooldridge, vs. The State of Florida; June term, 1904; Offense, Forgery; Circuit Court, Jackson County.

James E. Starke, vs. The State of Florida; June term, 1904; Offense, Murder in the first degree; Circuit Court, Duval County.

Loren Snelling, vs. The State of Florida; June term, 1904; Offense, Murder in the first degree; Circuit Court, Jackson County.

SUGGESTIONS AS TO LEGISLATION.

The Constitution requires the Attorney General to report to the Legislature, at each session, such legislation as he may deem advisable.

Section 88 Revised Statutes, requires the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the courts thereon referring to previous legislation on the subject, and to make such suggestions, as in his opinion the public interest may demand.

Pursuant to the above mentioned requirements of the Constitution and Statutes of the State, I respectfully submit the following:

In the case of *State ex rel., Guyton vs. Croom*, Comptroller, 37 South Rep. 303, the court held that the phrase "All criminal cases prosecuted in the name of the State," used in Section 9, Art. 16, Constitution 1885, as amended in 1894, does not embrace proceedings before the grand jury, consequently it does not impose upon the counties the duty of paying the per diem and mileage of witnesses before grand juries. That the appropriations act of 1903, made provision for the payment, by the State, of witnesses before the grand jury.

The act imposing License and other taxes, Chapter 5106, needs some revision. The last paragraph of Section 5, is objectionable, because of discriminations, so also, are Sections 33 and 44. Section 36 should be amended so as to remove the apparent discrimination between pool and billiard tables. Section 45 has also been regarded as ambiguous and has caused some difficulty to Tax Collectors.

Chapter 5109, acts 1903, providing for Annuities for Widows of deceased Confederate Soldiers and Sailors of the State, has had the effect of increasing very largely the pension roll, so that an increase of the pension tax will be necessary. The State Board of Pensions should be vested with the discretion of granting or rejecting a petition for a pension upon the evidence submitted and should be authorized to prescribe forms upon which applications should be made and proofs submitted.

Chapter 5119, Acts 1903, authorized the Governor to appoint a State Auditor, it defined his powers and duties, and repealed Chapters 4984 and 4849. This act has been most beneficial in its results. It operates to reduce the loss to county and State from carelessness and inefficiency in office, to a minimum. The book-keeping in the public offices is being systematized and work of keeping the public accounts is becoming more thorough and satisfactory.

Chapter 5151, Acts 1903, providing for the cancellation of void, illegal or imperfect Tax Sale Certificates, seems not to have had the desired effect. Among the vast number of tax certificates now held by the Clerks of the Circuit Courts, there are many void and imperfect, but as the land covered by those certificates does not appear upon the tax books, the State and counties are not receiving the revenue which the tax upon the land would produce. I think therefore that the act should be amended so as to require the clerks to examine the certificates held by them, to make reports showing the invalidity of the certificates, and to forward them to the Comptroller as contemplated by the act, and to provide a reasonable compensation for such work, to be paid to the clerks. The compensation may be based upon the number of certificates conceded by the Comptroller, State Treasurer and Attorney General to be invalid.

Chapter 5195, Acts 1903, requiring water companies to clean tanks and flush mains, should be amended by making it the duty of some police officer to require the cleansing to be done, and placing a penalty upon the executive officer or superintendent of the company or plant, for failure to comply with the requirements of the law.

Several of the Circuit Judges of the State have suggested the following:

Hon. W. S. Bullock, Judge of the Fifth Judicial Circuit.

(1.) Chapter 4122, Section 6, Acts 1893, as amended by Chapter 4386, Acts 1895, should be amended, so as to require the clerk in the presence of the County Judge, or Justice of the Peace, and the sheriff or a deputy, to draw from the box the names of thirty-six persons to serve as jurors, instead of thirty. That Chapter 5127, Acts of 1903, amended only Section 5 of Chapter 4122, Acts of 1893. Section 5, as amended by Chapter 5127, Acts of 1903, requires the judge to draw the names of thirty-six

persons to serve as jurors, but Section 6, provides, that in cases, where for any cause the judge fails to draw the names of persons to serve as jurors, the clerk shall draw the names of only thirty persons to serve as jurors.

(2.) That Committing magistrates be required to give to each witness, appearing before him in any commitment trial, where the defendant is held to await the action of the grand jury, a slip of paper, upon which shall be printed or written the date upon which the Circuit Court will convene. That where the witnesses are recognized to appear at the next term of the court the information furnished by the slips of paper would secure prompt attendance.

(3.) That there should be suitable legislation providing for filing with the clerk, copies of all pleadings filed. This would remove a great deal of inconvenience and annoyance to the clerks, and prevent delays, pretexts and excuses for opening defaults and decrees pro confesso. I would suggest that the act be made applicable to all courts, having original Civil jurisdiction and that the opposite party or his counsel be also supplied with a copy of any motion or pleading filed.

(4.) Constructive service upon non residents.

Section 1413, Revised Statutes, as amended by Chapter 4129, Acts of 1893, is defective in not requiring a more specific statement as to residence, or the best known or believed residence of the defendant. He suggests that, the Circuit Judge should designate in each county in his circuit some reputable member of the bar to represent all non residents. The Complainant's Attorney should make or file an affidavit stating the post office address, or the best known post office address, and last known address and belief as to the present address of the defendant. The attorney appointed by the court should then write to the defendant, at all the post offices designated and to exercise due diligence in notifying the defendant of the suit, for which service the attorney should be paid a reasonable fee, to be paid by the complainants and taxed as costs in the case.

(5.) Chapter 5122, Acts of 1903, should be amended, so that one or more Court Stenographers may be appointed in each Judicial Circuit. In case of sickness or inability to attend, no provision is made for another to act. The amendment should provide, that when the regu-

lar official stenographer does not attend court, that the Judge could appoint another, whose report of the testimony should have the same effect, as that of the official reporter.

(6.) Section 1442, Revised Statutes, should be amended, so as to reduce the cost of taking depositions of witnesses to twelve and a half cents per 100 words.

Hon. R. M. Call, Judge of the Fourth Judicial Circuit, suggests:

(1.) That the law prescribing the mode of procedure for the exercise of the powers of eminent domain, be amended, so that an issue, as to the necessity for the taking, may be made up and tried by a jury or otherwise, before any question as to value may be determined. It is urged in behalf of this amendment that the rights of the public would thus be protected against encroachments under condemnation proceedings. Chapter 5017 laws of 1901, could be amended so as to secure the above mentioned provision.

(2.) That provision be made by law for the fees to be paid Special Masters and Examiners in Chancery, providing a method, by which such fees may be collected, and to that end, they be given the same rights and powers to withhold the papers and records in the cause until his fees be paid, as are now possessed by Referees under Section 1235, Revised Statutes.

(3.) He suggests the abolishment of the writ of Error, as a writ of right in criminal cases. That the law be changed, so that in all criminal cases, the writ of error shall issue only after application to the Appellate Court, on an inspection of the record in the case.

I recommend the favorable consideration of the above suggestions and in addition thereto, respectively submit the following:

ATTORNEYS, ADMISSION TO PRACTICE.

That a board of Legal Examiners be appointed by the Governor for each Congressional District, to which board of examiners shall be referred, all applications made within the district for admission to practice the legal profession in the courts of this State. The applications to be made by motion to the Circuit Court, through some

member of the bar. If the judge is satisfied that the applicant is of good moral character and otherwise qualified, he shall refer the application to the board of examiners within that Congressional District. The board shall examine the applicant touching his qualifications, in such branches of the law as the board may deem proper. They shall make report to the judge before whom the application is made, who shall make such order as the report indicates. Such fee should accompany each application as may be reasonable, to be used by the board to defray expenses of their meetings. Meetings to be held as often as may be necessary, not less than twice each year, at such place in the district as may be determined by the board. Such provision is feasible in the exercise of the police power of the State.

APPEALS.

That a statute should be enacted requiring the record, in civil cases to be filed in Appellate Court at least ten days before the return day of the writ or date to which the appeal is taken.

BANKING.

I suggest that the power now possessed by the Comptroller, in the matter of the Supervision and Control of State Banks, be increased. Clerical help should be provided and adequate provision made for the examination of the affairs of banking companies and Saving Banks, as contemplated by Section 2191, Revised Statutes. Provision should be made for the publication of the examiner's report yearly. A limitation should be placed upon the active officials of a bank, borrowing too heavily of the funds of the bank.

The Comptroller should be given the power of taking possession of a bank until a receiver can be appointed, on becoming satisfied that the bank has become insolvent, etc.

INSURANCE.

The Board of Insurance Commissioners, should be authorized to employ a competent actuary or person well versed in the insurance business, to examine and pass upon the reports and statements of Insurance Companies, who desire to transact business in this State, as to their financial standing and reliability. The Commissioners should have a wider discretion in the matter of directing certificates to be granted to companies to transact business in this State. They should be authorized to withhold a permit upon the failure of the company to comply with such reasonable regulations or requirements as the Commissioners may prescribe.

The expense of employing the actuary or examiner should be paid by the State.

The law as it exists now is deficient.

The vast sums of money now on deposit in the State Banks and Savings Banks, and the large sums which are every year invested by the citizens of this State in insurance, Life, Fire and Sick Benefit, seem to require some precautionary measures as above suggested.

COUNTY JUDGE AND ESTATES.

The provisions of Section 1624, Revised Statutes, as to enforcing judgments, obtained in Justice of the Peace Courts, should be made specially to apply to judgments obtained in County Judge's Courts. The probate jurisdiction of the County Judge should be revised and amplified. Greater power should be given to require the filing of annual reports by executors and administrators. The expense incident to the administration of small estates should be reduced. When the head of a family dies intestate in this State, leaving children or a widow, the County Judge should be directed by law, to direct the appraiser to set aside the homestead, when the appraisal is made.

There should be a statute of limitation, say for three years, against all creditors of decedent estates, whether an administrator has been appointed or not.

CITIES AND TOWNS.

Should be required to publish, monthly, statements of receipts and disbursements.

CORPORATIONS.

Should be required to supply yearly to the Comptroller, under oath, list of stock-holders, stock owned by each, gross receipts, expenses, net profits, dividend declared and such other information as would secure publicity of its affairs. This would appear beneficial to the public for obvious reasons.

COUNTY COURTS.

In counties where County Courts are established, the law should provide that Justices of the Peace should have no jurisdiction to try criminal cases.

CRIMINAL PROCEDURE.

A form of indictment in certain felonies might be prescribed. The common law forms are unnecessarily prolix and complex. The material allegations could be alleged in simple language, divested of unnecessary repetitions and made perfectly intelligible to any one, the defendant being made fully cognizant of the nature and cause of the accusation against him. Provision could be made for serving a copy of the indictment upon the defendant or his counsel.

Committing magistrates should be required by statute to caution the accused, brought before him for a hearing, that any statement or confession the accused may make may be used against him and to inform him of his rights in the premises. Memorandum of the testimony should be taken by the magistrate and kept with the papers.

CRIMES.

Chapter 4032, Acts 1891, should be amended, so as to provide that any person, who in consideration of having entered into a written contract to perform any act or service for another, obtains from the hirer any money or

other personal property with the intent to defraud, and who, abandons the service of the hirer without just cause, without first repaying such money or paying for such personal property, shall be deemed guilty of a misdemeanor.

GARNISHMENT.

A bond should be required of the plaintiff in garnishment before the writ issues, in cases where the writ is applied for before judgment, in the same manner and upon the same conditions as required in Attachment. The plaintiff, his agent or attorney, should be required to set forth in his affidavit some other ground, than his belief that the defendant will not have in his possession, sufficient visible property in the county to satisfy the judgment that he, the plaintiff, expects to obtain in the suit. The bond should inure to the benefit of the Garnishee and defendant.

JUSTICE OF THE PEACE.

Justice of the Peace Courts should have no criminal jurisdiction to try cases in counties where County Courts are established. Writs should be returnable to County Court. In civil cases there should be two trial terms in each month; the first day, of each term should be a rule day. Each justice should designate by order the place in his district where the terms of his court shall be held, and the order entered in his docket, and notice thereof given, by posting at the Court house and at least two places in the district. Power to change place by a new order and by giving at least one month notice as above indicated. All criminal and civil cases should be tried at the place designated in the order.

The accused when brought before the Justice should have a right to a postponement of at least twenty-four hours to prepare for trial.

Appeals and writs of error should be taken from Justice of the Peace Courts within two weeks. In civil cases, in order that a judgment may become a lien upon real estate, a transcript thereof should be filed in the Clerk's office within sixty days.

MARRIED WOMEN.

Provision should be made by law for personal judgments against married women, and that the same shall become a lien upon her estate, when she engages in business with her husband's consent and contracts debts in her own name, the same as if she had been declared a free dealer upon her own petition. When she, with her husband's consent undertakes to engage in business, she should be authorized to contract and be contracted with, sue and be sued and to bind herself in all respects, as if she were unmarried. That when a married woman becomes a free dealer, she may be authorized to convey her real property without her husband joining with her.

MANDAMUS.

Chapter 4914, Acts 1901, should be amended to compel the sheriff under a proper showing, to make levy of the execution and effect sale of the property thereunder.

CONTRIBUTORY NEGLIGENCE.

The Common law rule upon this subject should be changed. It should not be a bar to the right of recovery on the part of the injured party, where the party who commits the injury is guilty of negligence also, which contributes to the injury. The doctrine of comparative negligence, even, would be more just. I would suggest, that the same rule which obtains as to railroad companies in this State, should also apply to all businesses in which machinery is used, such as saw mills, phosphate mining, turpentine operation, manufactories and such.

SPECIAL MASTERS AND EXAMINERS.

The fees of these officers should be fixed by law.

TAXES.

Section 8, Chapter 4888, Acts 1901, should be amended so that the notice of application for tax deed should state the amount of money necessary to redeem the certificate.

Some provision should be made by law for re-estab-

lishing tax certificates, held by the clerks for the State, in cases where the certificates were destroyed by fire or otherwise.

I suggest, that certified copies of the certificates by the Comptroller, made from the records in his office, be made by law of the same force and effect as the originals in cases where such originals have been destroyed by fire or other means. That such copies be placed in the possession of the clerk, and that he be held in all respects accountable for the same, as if the copies were the originals.

WRITS.

Some provision should be made by law for preserving of record, proof of service, of all writs or orders or notices, whether actual or constructive, in Common law and Chancery cases. This would prevent any question as to whether service was effected.

Provision ought to be made, regarding service of notices in any litigation upon parties or their counsel, who reside out of the county or State. Service by mail should be sufficient.

To the members of the bar of this State, who have so generously responded to my request for suggestions as to needed legislation, I am very indebted.

The Following Are the Official Written Opinions
Given by This Office From February 15,
1904, to January 1, 1905.

STATE BOARD OF HEALTH.

Tallahassee, Fla., Feb. 20, 1904.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir—Section 780, Revised Statutes, provides for the compensation of the members of the State Board of Health and the State Health Officer.

Section 781 provides for the employment of an Assistant Health Officer and provides for his compensation and prescribes his duties.

Section 772 of the Revised Statutes as amended by Chapter 4348, laws of 1895, vests in the State Board of Health the general supervision of the public health, and the power to make, promulgate and enforce such rules and regulations as may be necessary for the preservation of the same.

Chapter 4345, laws of 1895, vests in the State Health Officer under the direction of the State Board of Health the administrative and executive control of all maritime and domestic quarantine systems of the State. He is empowered to make arrests without warrant for any violation of the quarantine regulations of the State Board of Health and is empowered to deputize sanitary agents for that purpose.

Chapter 4695, laws of 1899, directs the State Health Officer or his agent, under the circumstances named to assume charge and management of all and every case of contagious and infectious disease. The act also provides for the payment of all necessary and legitimate expense attendant upon such case or cases of disease after the State Health Officer or his agent has assumed management and control.

Chapter 4693, laws of 1899, provides for the levy of a tax in order that a fund may be created for the maintenance and support of the State Board of Health.

The power and authority thus conferred upon the State Board of Health, and through it to the State Health Officer, his assistant and agents, are ample, and the matter

of what shall be done and what expense shall be incurred rests within the discretion of the State Board of Health, limited to what may be considered necessary for the maintenance and support of the State Board of Health other than for maintenance of quarantine or maritime sanitation.

Section 107, Revised Statutes, provides that the Comptroller may prescribe the forms of all papers, vouchers, reports, returns and the manner of keeping the accounts and papers to be used by the officers of the State or other parties having accounts, claims or demands against the State.

I am of opinion, therefore, that the resolution adopted by the State Board of Health, February 9th, 1904, prescribing the traveling expenses to be allowed to officers and employes of the State Board of Health is within the scope of the authority vested in the Board by law.

Very respectfully,

W. H. ELLIS,

Attorney General.

TAX CERTIFICATES.

Tallahassee, Fla., March 26, 1904.

Hon. A. C. Croom,
Comptroller,

Tallahassee, Fla.

Sir—Regarding your inquiry of the 24th instant regarding your authority to alter tax certificate number 198 of 1898 of Levy County, issued by H. B. Lloyd, Tax Collector of that county, I have to say that I find no authority for the alteration of such instruments by you.

Respectfully,

W. H. ELLIS,

Attorney General.

INSURANCE.

Tallahassee, Fla., March 26, 1904.

Hon. William V. Knott,
State Treasurer,

Tallahassee, Fla.

Dear Sir—I am of the opinion that the Royal Benefit Society of Washington does not come within the pro-

visions of Section 5 of Chapter 5222, Acts of 1903. I have carefully read the constitution and general laws of the society and other documents relating thereto and am persuaded that the society does not come within the provisions of Section 5 of the Act referred to.

Respectfully,

W. H. ELLIS,
Attorney General.

BANKS.

Tallahassee, Fla., March 26, 1904.

Hon. A. C. Croom,
Comptroller,

Tallahassee, Florida.

Dear Sir—Regarding the inquiry of the “Van Norden Trust Company” of New York, as to whether a bank organized under the laws of Florida may treat a deposit with the “Van Norden Trust Company,” as a part of its reserve fund required by law, I have to say: Section 2182, Revised Statutes of Florida, provides: “Every banking company shall at all times have on hand in lawful money of the United States an amount equal to at least twenty per cent of the aggregate amount of its deposits,” etc. Section 2183, Revised Statutes, as amended by Chapter 4750, Acts of 1899, provides that “Three-fifths of the reserve of twenty per cent required by the proceeding section to be kept may consist of balances payable on demand due to the company from banks or bankers in other cities with whom such company may keep its current account; or of bonds of the United States, State of Florida, counties and cities of the State of Florida, said bonds to be approved by the Comptroller.” Assuming that the Van Norden Trust Company is a banking company, any bank organized under the laws of this State which keep its current account with the Van Norden Trust Company may treat its balance with that Company as the surplus required to be kept to the extent of three-fifths of the twenty per cent of the aggregate amount of its deposit, required by law to be kept on hand. That balance kept by the bank, organized under the laws of this State, with the Van Norden Trust Company must of course be a balance payable on demand.

Yours truly,

W. H. ELLIS,
Attorney General.

LICENSE TAX.

Tallahassee, Fla., March 26, 1904.

Hon. A. C. Croom,
Comptroller,

Tallahassee, Florida.

Sir—Your letter of the 25th, relative to the liability of The South Florida Telegraph Company for the occupational tax provided for by Chapter 5106, laws of 1903, has been received. The act provides: "Sec. 1. No person shall engage or manage the business, profession or occupation mentioned in this act, unless a State license shall have been procured from the Tax Collector, or State Treasurer which license," etc. "Sec. 53. That all telegraph companies now doing business under separate names, whether incorporated under the laws of this State, or any other State, or whether incorporated at all or not, shall on the first day of October of each year, pay to the State Comptroller a license tax of five hundred dollars for State purposes and no further license tax shall be required by any county or municipality. Provided, That private telegraph lines not for public use shall be exempt from such license tax. Consolidation shall not exempt from this tax." Now was the South Florida Telegraph Company engaged in, managing or operating the business of transmitting messages over its line for the public, on the first day of October, 1903, or since? That question, which is a question of fact, and the answer to which seems to me to be decisive of the question submitted to me, you give me no information upon, but refer me to a letter signed by Mr. John E. Hartridge. That letter gives no information upon the subject. He does not pretend to say that the South Florida Telegraph Company was not engaged in or managing the business of transmitting messages over its lines for the public on the first day of October, 1903. Nor does he say that it has not been so engaged since that time. The mere fact of its consolidation with another company would not relieve it from the tax. He says that the company is not *now doing business*.

A corporation may lawfully do what its charter authorizes. The South Florida Telegraph Company may lease its wires, poles, instruments and other property to another person if its charter so authorizes. Whether

such lease would exempt it from the payment of the tax depends, I think, upon the company's status under the contract, with reference to the business conducted over its lines.

The enforcement of the tax is provided for by Section 57 of the act.

Respectfully,

W. H. ELLIS,

Attorney General.

LANDS.

Tallahassee, Fla., June 22, 1904.

Hon. B. E. McLin,

Commissioner of Agriculture,

Tallahassee, Fla.

Sir—The letters from Southern States Lumber and Timber Company in which it was suggested that the State of Florida have recorder in the various counties, the patents from the United States to the Florida lands, have been carefully read by me and the suggestions and reason urged by Mr. Welch duly considered.

Section 144, Revised Statutes, provides that a public land office for the State of Florida be kept in one of the rooms in the capitol in which office shall be deposited and preserved all of the records, surveys, plats, maps, field notes, patents and all other evidence touching the title and description of the public domain, and all lands granted by Congress to the State or which may hereafter be granted. Section 1112, provides that the certificate of the Commissioner of Agriculture under his official seal, with respect to the ownership by the State or by the School, Seminary or I. I. Fund of any lands in the State shall be prima facie evidence of the facts therein certified. That section has been construed by the Supreme Court to apply to patents of the United States Government. These provisions are ample to afford opportunity for thorough investigation as to the State's holdings.

I therefore deem it necessary to adopt the suggestion of Mr. Welch as to the matter of recording patents from U. S. Government to the State of Florida to the lands therein conveyed.

Very respectfully,

W. H. ELLIS,

Attorney General.

BANKS.

Tallahassee, Fla., June 23, 1904.

Hon. A. C. Croom,
Comptroller.

Tallahassee, Florida.

Dear Sir—I have before me the communication of Mr. R. A. Burford of Ocala, Florida, concerning the directorship of the Bank of Dunellon.

Mr. Burford desires to know "whether or not a person is qualified to act as director on organization of a bank who may have subscribed for only ten shares of stock and who may have paid in only fifty per cent. of his subscription, but who, in good faith, expects to pay the remainder of the capital stock as subscribed by him in installments as required by Section 2170."

Section 2169, Revised Statutes, as amended by Chapter 4897, Acts of 1901, provides that no banking company shall be organized with a capital of less than fifty thousand dollars, except as in that act provided, and that the capital stock shall be divided into shares of \$100.00 each. Section 2170, Revised Statutes, provides that fifty per cent. of the capital stock shall be paid in full before the company is authorized to commence business; the remainder of the capital stock is paid in installments of ten per cent. on the whole amount of the capital stock at the end of each month, commencing from the time the Comptroller authorizes the bank to do business. To illustrate this proposition, if A subscribes for and becomes the owner of ten shares of the capital stock of a banking company organized under the laws of this State, he would be required to pay five hundred dollars before the bank would be authorized to commence business. He would be further required to pay ten per cent. per month of the capital stock of which he had subscribed and becomes the owner of until the remaining five hundred dollars were paid. It would thus take him five months to complete the payments upon the stock for which he had subscribed, commencing from the date upon which the Comptroller had authorized the bank to do business.

I think that one becomes the owner of the capital stock of the company for which he subscribes, within the meaning of Section 2177, Revised Statutes, when he subscribes for and makes his first payment to the treasurer of the

company, upon the stock for which he subscribes and the issuing of his certificate. Section 2171, seems to support this construction, for it provides that when any shareholder fails to pay any installment on the stock when the same is required by Section 2170, the directors may *sell* the *stock of such delinquent shareholder*. That section supports the proposition that one may be a shareholder and yet owe to the company a balance upon the shares. In that case one is a bona fide shareholder within the meaning of Section 2177. Section 2174, provides how the Comptroller shall examine into the condition of the company upon notice; ascertain the amount of money paid in on its capital, the name and place of residence of each of its directors and the amount of capital stock of which each is the owner in good faith, and whether the company has complied with all provisions of law to entitle it to engage in the business of banking. When the Comptroller is satisfied from an examination of the facts represented to him and duly attested as the law directs, that the company is entitled to begin business, he issues a certificate that the company has complied with the law and that it is authorized to commence business. Now, if, up to this time, only fifty per cent. of the capital stock has been paid in, the company would nevertheless have the right to commence business. Each person to whom a certificate of stock had been issued would, in my judgment, be deemed a shareholder and one month from the date of the Comptroller's certificate he would be required to pay in ten per cent. more, and so on every thirty days until he had paid into the treasury one hundred per cent. of the capital stock for which he had subscribed. In the meantime, however, he would be considered a shareholder within the meaning of Section 2171, 2177 and 2178. He could be divested of the title to such shares for the failure to pay the installments of ten per cent. under the provisions of Section 2171.

Very respectfully,

W. H. ELLIS,
Attorney General.

TAXATION, BOATS.

Tallahassee, Fla., July 5th, 1904.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir—Your letter of June 11th, enclosing letter from G. W. Hinsey, Tax Collector of Franklin County, letter from W. R. Moore, General Manager and affidavit of D. A. Andrews, Tax Collector for the county of Muscogee, Georgia, and requesting an opinion from me upon the matter therein presented, has been received. The facts as presented by the correspondence above referred to are as follows: The Tax Assessor of Franklin County has assessed for State and county taxes, the following named steam vessels plying the Apalachicola, Chattahoochee, and Flint Rivers, viz: The "W. C. Bradley," "Queen City," "J. W. Hires," and "M. W. Kelley."

The "W. C. Bradley" and "Queen City" are owned by the Merchants and Planters Line, a Georgia corporation; The "J. W. Hires" is owned by the Georgia and Florida Navigation Company, a Georgia corporation; The "M. W. Kelly" is owned by the Merchants and Naval Stores Transportation Company, a Georgia corporation.

That in Columbus, Georgia, are located the principal business offices of the corporations.

That the boats are licensed by the United States Government, that taxes are paid upon them in the county of Muscogee in the State of Georgia, and that all of the boats are registered at the port of Apalachicola.

The facts affecting the question under consideration which do not appear from the correspondence, but which may be assumed to exist are as follows:

The boats are engaged in interstate commerce. The termini of the line are Columbus, Georgia, and Apalachicola, Florida, and that the port of Apalachicola was the nearest port to which the acting and managing owners of the vessels, usually resided, at the time of registry.

In the case of *Morhan vs. Parham*, 16 Wall. The Supreme Court of the United States said: "A vessel although a vehicle of commerce is not exempt from taxation on that score. That 'A steamboat engaged in a local business within a State may be subject to local taxation, although it carry the mail of the United States.'"

In the case of Transportation Company vs. Wheeling, 99 U. S., the Supreme Court of the United States said: "Taxes levied by a state upon ships or vessels as instruments of commerce and navigation, are within the clause of the Constitution which prohibits the states from levying any duty of tonnage without the consent of Congress.

In the first case the "Francis" was a coasting steamer between Mobile and New Orleans, she was duly registered at the port of New York before being brought to Mobile, under the ownership of Morgan, the owner, who was a resident of New York. The Court said the vessel was "Primarily and presumptively taxable under the authority of that State and of that only," the Court held, that there was nothing in the enrollment in the port of Mobile that affected the boat's registry or her ownership in New York. That the State of Alabama, had no jurisdiction over the vessel for the purpose of taxation, for the reason, that it had not become incorporated into the personal property of that state, that it was temporarily in Mobile only, being engaged in interstate commerce with its situs at the home port of New York, where it belonged and *where its owner* was liable to be taxed for its value.

In the second case a corporation of West Virginia, was the owner of the boats. The boats navigated the Ohio River between Wheeling, West Virginia, and Parkersbury, Ohio. When the boats were not running they were tied up at Wheeling. The boats were taxed according to the value of personal property and taxes collected under the laws of West Virginia. It was contended that the state had no right to impose a tax on the vessels, that it was denied by the Constitution which declares that "No state, shall, without the consent of Congress, lay any duty of tonnage" and that "Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes." The court said that "Annual taxes upon ships and vessels for the support of the state governments as property, upon a valuation as other personal property, are everywhere laid. That many cases in refuting the authority of the state to lay duties of tonnage, have admitted that the *owners* of ships may be taxed to the extent of their interest in the same, for the value of the property. "Assessments of the kind, when levied for municipal purposes must be made against

the owner of the property and can only be made in the municipality where the owner resides.

A ship, says Mr. Justice Taney, is a vehicle of commerce and within the power of regulation granted to Congress, yet it has always been held that the power to regulate commerce as conferred, does not give to Congress the power to tax the ship nor prohibit the state from taxing it as the property of the owner when he resides within their own jurisdiction. The Court held that the owner of the vessel could be taxed for his interest in the vessel.

The light which the dicta of these cases throw upon the question, is: That a ship or vessel engaged in interstate commerce is taxable by a state like other personal property, and that she is taxable in the state where she is owned and registered, and that she does not become incorporated into the personal property of a state, merely because she is engaged in commerce upon the waters of that state, or engaged in commerce between that state and another state.

With regard to the taxation of personal property, it is well settled that the owner is not to be taxed at his residence or domicile for property situated in another state.

Burroughs says, That the situs of personal property for the purposes of taxation depends in a great measure upon the nature of the property, and that ships are likewise taxable at the residence of the owner, which is generally that of the home port, or place of registry; although when they are in different states the residence of the owner governs. Burroughs on Taxation P. 60.

The Supreme Court of Florida in the Johnson—DeBary-Baya case 37 Fla. 499. Said, "Only the state in which the home port is situated has dominion over the vessels, under such circumstances, for the purpose of taxation." In that case the vessels were registered at the port of New York and their owners lived there. The Court holding that such property is primarily taxable only at the home port where the owner resides.

For the purpose of ascertaining the actual situs of the property for purposes of taxation, it is necessary to determine the "Home Port" of the boats. The Statute of the

United States provides, where the vessels shall be enrolled or registered, but it does not follow that such registry or enrollment ipso facto determines the home port of the vessel. The word "port" as used in the Statutes does not always mean a port of entry, but may mean the place where the owners of the vessel reside. *Lotus No. 2*, 26 Fed. Rep. 637.

In the case of *St. Louis vs. The Ferry Company*, 11 Wall. 423, The question was: "Where was the situs of the property?" The Court said, "The boats were enrolled at the city of St. Louis, but that throws no light upon the subject of our inquiry, 'The boats were owned by an Illinois corporation.'

"Home Port" does not always mean a place where a vessel is registered or a port of entry, it may mean a port or place other than a port of entry. *Lotus No. 2*, 6, Fed. Rep. Supr.

The Alabama Court said, in the case of *Mayor vs. Baldwin*, 57 Ala. 61, "The *registration* of the boat in Mobile is not material. It could not be registered elsewhere, the residence of the owner being in that collection district and it is this residence which fixes the home port."

And so it seems that Mr. Burroughs' conclusion as expressed in his work on taxation: "That when the registry of a vessel is at a port in one state and the owner of the vessel lives in another state, the residence of the owner governs;" is fortified by authority.

The remaining question is: Have the vessels acquired an actual *citus* in Florida? I think not. The owners of the vessels have not severed them from the place of their domicile and committed them to the power of the State of Florida, by the mere act of registry at the port of Apalachicola; they could not have been registered elsewhere. As instruments of commerce they have not become severed from the domicile of their owners by engaging in interstate commerce, nor have their owners committed them to the power of the State but only to its comity. The vessels relation to the port of Apalachicola is simply one of contact to one of the termini of its line. I think therefore, that the tax is uncollectible.

Yours truly,
W. H. ELLIS,
Attorney General.

RAILROAD COMMISSION.

Tallahassee, Fla., July 6, 1904.

Hon. Jefferson B. Browne,
Chairman Railroad Commission,
City.

Dear Sir—Your letter of recent date concerning an alleged rebate of fifty cents per bale charged as being allowed by the Louisville & Nashville Railroad upon all cotton originating in the vicinity of Greenwood, Florida, has been received.

You ask for my opinion upon the question, "whether the giving of this rebate is a violation of Section 13, Chapter 4700, laws of Florida, approved June 3rd 1899, and of Rule 3, Section 1, of the general rules of the Rules and Regulations, Florida Railroad Commission, or of either of said law or rule."

Section 13, provides: "If any railroad company or common carrier shall discriminate, by way of rebate or otherwise directly or indirectly in favor of any consignor or consignee of freight within this State, or allowing him a reduction of the rate fixed by said commissioners, as reasonable and just, any other consignor or consignee of freight within this State, shall have a right of action against the said railroad company," etc. This section also provides: "If any railroad, railroad company or common carrier doing business in this State, shall in violation or disregard of any rule, rate or regulation, provided by the commissioners aforesaid, inflict any wrong or injury on any person, it shall be the duty of the Railroad Commission if requested by such injured person, to institute proceedings to compell restitution," etc.

Section 3 of the Rules and Regulations of the Railroad Commission provides: "There shall be no secret reduction of rates of freight or passenger fares, and no rebate, drawback or other advantage in any form, upon shipments made or service rendered to any person, not allowed to all persons under like circumstances and conditions, but the same shall be uniform to all and public."

The effect of those provisions quoted from Section 13, of Chapter 4700, is first; to provide a right of action in favor of any person who is a consignor or consignee within this State, against whom any railroad company has discriminated in the matter of freight rate, by rebate or

otherwise or by refusing to him a reduction of the rate, fixed by the Commission upon freight, which reduction the railroad allows to another, against such railroad; And second, to require the Railroad Commission, if requested so to do by the person injured, to institute suit against a railroad company to compel restitution to any person who may have been wronged or injured by the action of the railroad in violating or disregarding any rule or rate or regulation provided or adopted by the Railroad Commission.

A petition was filed before the Railroad Commission in behalf of several persons living in Jackson County and doing business at Marianna, in which it was alleged among other things; That the Louisville & Nashville Railroad exacts a freight rate of \$1.50 per bale upon cotton shipped over its line from Marianna to Pensacola; that from the year 1900 to 1903 inclusive, the petitioners had shipped many bales of cotton from Marianna to Pensacola, and paid the rate of \$1.50 per bale; That two of the petitioners are engaged in the business of operating and conducting a cotton warehouse in Marianna; That during the year 1900 to date (of filing the petition) the L. & N. Railroad Company (in violation of law and rules of the Railroad Commission) allowed and gave to persons *hauling* cotton from the village of Greenwood in Jackson County direct to the depot of said company for shipment to Pensacola and points beyond (a rebate of) fifty cents per bale, while cotton handled in Marianna, or stopped at the warehouse in Marianna or elsewhere in Marianna, allowed no rebate. That Greenwood is an inland village in Jackson County and is not situated upon the line of Railroad of the L. & N. Railroad Company. That such action of the Railroad Company amounts to a discrimination against the petitioners and they have been damaged thereby. The petition asks that the Commissioners institute such proceedings as may be proper, and to enforce against the L. & N. Railroad Company the laws of the State and the rules of the Railroad Commission.

Upon a later date another petition was filed before the Railroad Commission in behalf of W. H. Milton, in which it is alleged; That the petitioner is a resident of the town of Marianna and is engaged in buying, selling and shipping cotton in bales. There is attached to the petition a copy of a rate of freight on cotton given by the L. & N. Railroad Company, which is alleged upon belief is a

secret rate, so far as the Railroad Commission is informed; it is further alleged that the rate is virtually a rate of \$1.00 per bale on cotton from Marianna to Pensacola. The "copy of the rate of freight," attached is as follows: "Freight tariff on cotton uncompressed per bale; Issued by Louisville & Nashvills Railroad Company from Greenwood, Florida to Pensacola, Florida. Dray to Marianna, fifty cents. L & N, \$1.00. Through \$1.50." The petition further alleges that in addition to said rate, there is another rate of thirty cents per hundred pounds or \$1.50 per average bale on cotton from Marianna to Pensacola. That Marianna is the railroad point for all shippers to whom the dollar rate is given, that the dollar rate is refused to most residents of the town of Marianna, but not to all. The petition then alleges what reason actuated the company in adopting the dollar rate, and that such rate of one dollar per bale of cotton shipped from Marianna to Pensacola is fair, just and reasonable. That the Greenwood rate has not been posted conspicuously, but has been kept in a book in the railroad office at the depot in Marianna, etc. The petition asks that the Commission adopt the one dollar rate and establish it as the rate from Marianna to Pensacola on cotton in bales, and asks for such other relief as is proper.

The testimony of Mr. Milton shows, that when cotton is hauled from Greenwood to the Marianna depot to be shipped to Pensacola, the wagoners or drivers are paid fifty cents for each bale of cotton hauled.

From all that I have been able to gather from the petition, letters and testimony submitted to me, it appears, that the Louisville and Nashville Railroad Company has adopted the same rate upon cotton shipped from Greenwood to Pensacola as it has upon cotton shipped from Marianna to Pensacola, except in the latter case a rate of thirty cents per hundred pounds is charged minimum bale 500 pounds, excess of 500 pounds charged proportionately; the difference between the Greenwood and Marianna rate being represented by the amount charged for the excess weight upon cotton from Marianna. That Greenwood is not a railroad point, that is to say, it is not upon the line of railroad. The railroad company does not receipt for the cotton at Greenwood, nor does it assume any responsibility for loss or damage in transit from Greenwood to Marianna or to any other depot upon

its line. In short its responsibilities as common carrier do not begin until the cotton is receipted for at the Marianna depot or some other depot along its line by the company. Two men may appear at the depot in Marianna, each having a bale of cotton weighing 500 pounds for consignment to a person in Pensacola. The Railroad Company receives both bales of cotton at the same time, assumes with reference to each owner at the same time, the same liability and responsibility and undertakes to perform for each identical service under identical conditions. Each owner pays to the railroad company the sum of \$1.50 for hauling his bale of cotton to Pensacola. The Railroad Company pays back to one man fifty cents, to the other it pays back nothing; this conduct is clearly not equality of charges for identical services under identical conditions, and in the absence of an explanation seem to be a violation of Section 13, Chapter 4700 laws of Florida, and a violation of Rule 3, of Rules and Regulations, Railroad Commission, State of Florida. In the cases about which complaint is made, the point upon the railroad's line of road at which the Railroad Company becomes liable as common carrier for the safe delivery of the goods shipped, is the same in all cases, the destination of the cotton is the same, the character of the goods shipped, the length of the haul, the expense to which the company is subjected, the route over which the cotton is shipped, the risk to the company and in fact all the conditions upon which the cotton is received for transportation and hauled are identical in both cases; yet one man gets a drawback of fifty cents per bale and the other receives nothing back. That this action of the Railroad Company is a discrimination by way of rebate or otherwise, directly or indirectly in favor of one consignor within the meaning of Section 13, Chapter 4700 and is a rebate, drawback or advantage to one person and not allowed to another under like circumstances, within the meaning of Section 3, Rules and Regulations, Railroad Commission, there can be no doubt.

Now what circumstances, condition or consideration removes from this transaction its objectionable character and renders this apparent discrimination, no discrimination in fact.

Is Greenwood a competitive point? And does the Company desire to control the patronage of the people of that

locality? If such is the case, the Railroad Company still disregards Greenwood as a shipping point, and pretends to assume no liability for cotton shipped from that vicinity until it is accepted by the Company at Marianna for delivery at Pensacola or other points.

The Company can not make one district of a county tributary to its road, by a discriminating rate at a point on its line common to the other districts of the county, in favor of the products or persons of the particular district.

Respectfully,
W. H. ELLIS,
Attorney General.

REQUISITION FOR WITNESSES, BEFORE GRAND JURY.

Tallahassee, Fla., July 26th 1904.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir—I am receipt of your letter of the 25th, advising me that you had that day been handed by Hon. A. C. Croom, Comptroller, a requisition signed by Moses Guyton, Clerk of the Circuit Court, for Jackson County, Florida, for five hundred dollars (\$500.00) to pay jurors and witnesses who appeared before the Grand Jury at the Spring Term of the Circuit Court 1904, for Jackson County. Said requisition was endorsed on the back in words and figures as follows:

“Jackson Co., \$500.00, Spring Term Circuit Court.

Hon. W. V. Knott, State Treasurer.

Dear Sir—Kindly honor the within requisition Spring Term Circuit Court, Jackson County, to pay jurors and witnesses.

Yours truly,
A. C. CROOM,
Comptroller.”

I observe that the order from the Comptroller to honor the requisition is not countersigned by the Governor.

You request my advice as to whether you are required to transmit the amount of said requisition to the Clerk of the Circuit Court for Jackson County, as therein re-

requested under Chapter 4121 Laws of Florida. I beg leave to state, that Chapter 4121 Laws of Florida, provides for a special method of disbursing funds from the State treasury. Section 24 of Art. 4, of the Constitution provides, that the Treasurer shall disburse no funds except upon the order of the Comptroller countersigned by the Governor, in such manner as shall be prescribed by law.

The Supreme Court of Florida in a case decided during the present term, in which Moses Guyton, as Clerk of the Circuit Court for Jackson County was relator, and A. C. Croom, Comptroller of the State of Florida was respondent, decided; that the transmittal of money by the Treasurer of Florida, upon a requisition from a Clerk of the Circuit Court, such as is herein described, is a disbursement of funds from the treasury of the State of Florida, within the meaning of Section 24 of Article 4, of the Constitution above referred to. And that it is necessary for the Governor to countersign the order of the Comptroller to justify the Treasurer in disbursing the money specified in the requisition, as provided by said Chapter 4121.

It is therefore my opinion, that in as much as the Governor has not countersigned the Comptroller's order, you could not be required under the law to transmit the amount specified in the requisition to the Clerk of the Circuit Court for Jackson County.

Yours very truly,

W. H. ELLIS,

Attorney General.

TAX CERTIFICATES.

Tallahassee, Fla., August 9th, 1904.

Hon. A. C. Croom,
Comptroller,

Dear Sir—I am in receipt of your letter of the 8th in which you ask my opinion as to your authority to issue to the several Clerks of the Circuit Courts of the State of Florida, the following order:

“On the first day of January and of July of each year beginning on the first day of January, 1905, you will make up and transmit to this office a complete list of all tax certificates on hand and noting on such list all partial redemptions endorsed on any certificate opposite such

certificate and under the head for that purpose in the blank. These lists should reach my office by the 15th of the months of January and July of each year."

I am of the opinion that Section 96 of the Revised Statutes of Florida, vests in the Comptroller such authority.

Yours very truly,

W. H. ELLIS,
Attorney General.

TAX BOOKS.

Tallahassee, Fla., August 11th, 1904.

Sir—The letter from Mr. B. A. Thrasher, which is herewith returned, states that the Tax Collectors of Alachua County, have made a practice of selling the records of the Tax Collector's office for that County to the Alachua County Abstract Company, which I presume is a corporation or partnership.

In the first place, these records are the property of the State, and the State Attorney of that Circuit may be required to prosecute an action against the Abstract Company for the possession of the records.

In the second place, I am of the opinion that such malpractice in office is indictable under Sections 2571 and 2572, Revised Statutes, and the officers of the Abstract Company may be prosecuted for complicity therein.

Very truly,
W. H. ELLIS,
Attorney General.

To His Excellency,
W. S. Jennings,
Governor.

TAX CERTIFICATES.

Tallahassee, Fla., August 11th, 1904.

Hon. A. C. Croom,
Comptroller,

Dear Sir—I herewith return letter of Roberson and Small and the affidavit of B. F. Camp, concerning the reduction, of the valuation placed upon the Florida & Georgia Railroad Company. This document was placed in my hands to await a meeting of the board, which meeting has never been held.

I also return a letter from Hon. A. G. Hartrige, State

Attorney, and copy of written statement of J. E. Johnson, regarding the payment of attorney's fees in certain matters set out in said statement. I was requested to advise you upon the matter therein presented in order that you might reply to Mr. Hartrige's letter. Since then you informed me that the matter had been settled.

I also herewith return letter of Mr. J. E. Johnson, President of the Realty Trust Company, of Jacksonville, Florida, regarding the action of the Clerk of the Court in reference to cancelling certain tax certificates.

Chapter 5151 laws of 1903, makes it the duty of the Clerk of the Circuit Court, to select from among the tax sale certificates in their possession, all such certificates as appear on their face to be illegal, void or imperfect because of, erroneous descriptions or otherwise, and to transmit such imperfect or illegal certificates to the Comptroller, who, with the State Treasurer and Attorney General, who are required to examine the same and determine if they be illegal, void or imperfect, that they may be examined and destroyed. That act provides for no fee to be paid the Clerk for such work, nor does the Statute provide for any compensation to be paid the Clerk for such work.

Yours very truly,

W. H. ELLIS,

Attorney General.

STATE NORMAL SCHOLARSHIP.

Tallahassee, Fla., Sept. 15th, 1904.

Hon. Wm. N. Sheats,

State Superintendent Public Instruction,
Tallahassee, Florida.

Dear Sir—I am in receipt of your letter of the 13th requesting my opinion upon the question "Whether or not a married woman is eligible for selection for a scholarship in the State Normal School at De Funiak Springs."

Chapter 4997 Acts 1901 is the act which establishes scholarships in the State Normal School at De Funiak Springs. The preamble to the act gives the reason for its existence. The preamble states that "A large majority of the teachers of the State are women and would gladly improve opportunities of better preparing themselves for this profession, etc. There is nothing in the law of this State which prevents married women or married men

from becoming teachers in the public schools of this State, therefore it is not improper to suppose that among the "large majority of the teachers of the State" who are women, there are some married women.

The act seeks to afford to these female teachers and those desirous of becoming teachers an opportunity to better prepare themselves for teaching, limiting the benefits of the act to young persons of each sex between the ages of eighteen and twenty-five.

There is nothing in the language of Section 2 of the act to exclude either married women or married men from the benefits afforded by the act. And there is certainly nothing in the motive which inspired the act; as that motive is gathered from the preamble, which excludes a married woman from its benefits.

Section three of the act so far as it restricts the benefits of the act to those who sign agreements to teach for at least four years in this State or to refund the money received from such scholarship, may be affected by Chapter 5204, Acts 1903. The first section of which provides: "That no person shall be permitted to teach in the public schools of the State of Florida who does not hold a teachers certificate granted in accordance with the provisions of this act."

The entrance requirements prescribed for the Normal School by the State Board of Education, do not preclude married women or married men from receiving scholarships in the State Normal School. Rule Four of the Regulations, I think is valid, but it does not necessarily exclude married women or married men.

I herewith return letter from Mrs. Clark.

Yours truly,

W. H. ELLIS,
Attorney General.

CERTIFICATION OF TEACHERS.

Tallahassee, Fla., Sept. 15th, 1904.

Hon. Wm. N. Sheats,

State Superintendent Public Instruction,
Tallahassee, Florida.

Dear Sir—I am in receipt of your letter of the 13th instant requesting my opinion upon the question, "Has-

Section 13 Chapter 4331 Laws of 1895 been repealed by Section 1 Chapter 5204 Laws of 1903?"

Chapter 4331 Laws of 1895 is an act to amend certain sections of Chapter 4192 Laws of 1893 which is entitled "An act to prescribe rules and regulations for licensing teachers; to provide for uniform examinations, to secure fairness in examinations and in issuing teachers certificates and for other purposes."

Section 13 of Chapter 4331 Laws of 1895 provides, "That any person holding a diploma of graduation from either of the State Normal Colleges of this State, upon presentation of said diploma to any County Superintendent in this State, shall be entitled to a first grade certificate without examination; Provided, the person holding such diploma applies for certificate within one year from the granting of such diploma." This Section introduces into the act a subject which is not expressed in the title. The title to Chapter 4331 of 1895 indicates that the purpose of the act is to amend certain sections of Chapter 4192 Laws of 1893, but Section 13 does not purport to amend any section of Chapter 4192, and in fact introduces a different subject. Section 13 therefore is void since the subject and matter properly connected therewith were not embraced in the title of the act. Article III Section 16, Constitution.

Chapter 5204 Laws of 1903, purports to be a complete revision of the whole subject of the certification of teachers. Section 1 excludes all persons from teaching in the public schools of this State "who does not hold a teacher's certificate," graded in accordance with the provisions of the act? The section excludes from the provisions of the act the certificates issued under the laws of the State since January 1st 1894. A certificate issued under the laws of the State now must be issued in accordance with the provisions of Chapter 5204. And that act does not provide for issuing certificates upon diplomas from the State Normal Schools.

Yours very truly,

W. H. ELLIS,
Attorney General.

Dic. W. W. T.

I herewith return Mr. Watson's letter.

W. H. ELLIS,

STATE ATTORNEY'S FEES—COLLECTION OF CLAIMS.

Tallahassee, Fla., September 21, 1904.

Hon. A. C. Croom,
Comptroller,

Tallahassee, Fla.

Dear Sir—The correspondence between your office and Honorable A. G. Hartrige, State Attorney, regarding the collection of a claim against J. E. Johnson, former Tax Collector of Duval County, indicates that this claim which amounted to \$200.00 in favor of the State has been placed in the hands of Mr. Hartrige as provided by Section 112 of Revised Statutes.

Section 1356 of Revised Statutes, provides that the State Attorney shall receive from the State his actual expenses incurred in the prosecution of all charges against the collectors of revenue, sheriffs or other officers, or the sureties on their bonds, and a commission of ten per cent. on all moneys collected by him, or paid into the treasury on account of any claim prosecuted or compromised by him.

Section 1349 provides, that he shall make a report to the Comptroller on the first Monday in January and July in each year, on the condition of all claims placed in his hands or which he may have been required to prosecute and collect. That section also requires him at the time to pay over all moneys which he may have collected belonging to the State. Section 1356, above quoted, also provides, that the amount of the State Attorney's expenses and commissions are to be paid by the treasurer of the State on the warrant of the Comptroller, who shall issue his warrant for the same on the presentation of accounts duly sworn to. Mr. Hartrige has no authority to deduct his commission from the amount collected. It is clearly his duty under the Statute to remit to the Comptroller the whole amount collected; make out his account for commissions, duly sworn to, and have the warrant drawn by you, as Comptroller, for the amount of such account.

I herewith return said correspondence.

Yours very truly,

Enc.

Dic. W. H. E.—W. T.

W. H. ELLIS,

Attorney General.

STATE BOARD OF PHARMACY.

Tallahassee, Fla., September, 21, 1904.

Hon. W. S. Jennings,
Governor.

Tallahassee, Fla.

Sir—I am in receipt of a letter from Mr. C. H. Dickinson, Private Secretary, dated September 21st 1904, in which he requests information relating to the charges made by the "Medical Examining Board for the issuance of certificates." There was attached to that letter a letter from Mr. Y. H. Thomas, of Jacksonville, Florida, who makes some inquiry about the charges made by the "State Board of Pharmacy" for certificates issued by the Board. I also have before me a joint letter of R. T. Walker, M. D., Cedar Key, Florida, L. M. Cameron, M. D., Ft. White, Florida and L. P. Getzen, M. D., Ft. White, Florida, dated September 3rd 1904, and the letter of R. T. Walker, M. D. dated September 5th 1904, relating to the same subject. I presume therefore, that the information you desire relates to the charges made by the "Board of Pharmacy for the State of Florida" for issuing certificates under Section 816, Revised Statutes and not information relating to the board of Medical Examiners for issuing certificates.

Section 816 Revised Statutes, provides that "The Board of Pharmacy shall be entitled to collect of each person when they register and furnish a certificate as a registered pharmacist without examination the sum of two dollars, and of each person that they examine orally, or whose answers to a schedule of questions are returned subscribed to under oath, the sum of three dollars, which shall be in full for all services; and in case the examination of such person shall prove defective and unsatisfactory and his name not be registered, he shall be permitted to present himself for examination within any period not exceeding twelve months thereafter and no charge shall be made for such re-examination." This section of the Revised Statutes is still in force and has not been amended.

Chapter 5, Part 1, Title 2, of the Revised Statutes, embracing Sections 813 to 826 inclusive, relates to the establishing of a board of Pharmacy for the State of Florida and prescribes the duties and powers of the said board.

I am unable to find any authority existing in the board for making the charge of ten dollars for the issuing of certificates as provided under Section 814 and 815 of the Revised Statutes.

I herewith return the letters referred to, also the letter of Hon. Daniel Campbell, relating to the selection of a teacher for the State Normal School at De Funiak Springs.

Yours very truly,

Enc.

W. H. ELLIS,

Dic. W. H. E.—W. W. T.

Attorney General.

INSURANCE COMPANIES.

Tallahassee, Fla., Oct. 8th 1904.

Hon. W. V. Knott,

State Treasurer.

Dear Sir—I have your letter of the 5th in which you ask my opinion upon the following questions: "Are the several counties and municipalities of the State authorized by the laws to assess and collect from insurance companies licensed to do business in the State, additional taxes on their State licenses other than those provided for in Sections 23 and 24 of Chapter 5106 of the Acts of 1903 on local and traveling agents?"

"Are said counties and municipalities authorized to assess and collect taxes on the company licenses provided for in Section 22 of said Chapter; and in Section 4 of the Act making provision for the "Sick and Funeral Benefit Insurance Companies?"

"What percentage of the State taxes on such licenses may be required by the counties and municipalities?"

Section 22 Chapter 5106 Laws of 1903 provides "That each insurance company, association, firm or individual *doing business in this State*, including corporations or associations engaged in the business of insuring accidents to the person, acting as surety upon bonds, guaranteeing the fidelity of employees, and insuring employers against liability for accident to employees, and life insurance companies, shall pay to the State Treasurer a license tax of two hundred dollars; plate glass insurance companies, shall pay to the State Treasurer a license tax of fifty dollars; and in addition thereto, each of said companies *doing business in this State* shall, upon the first day of January after the passage of this act and on the first day

of each succeeding January thereafter pay to the State Treasurer two per cent upon the gross amount of receipts of premiums from policy holders in this State.

Section 23 of the same act requires *each* insurance company or association mentioned in Section 22, doing business in the State to furnish to the State Treasurer the name and address of *each agent* or solicitor authorized to write insurance in this State. The Section also requires *each* insurance company to pay to the State Treasurer a license tax of five dollars for *each* local agent or solicitor. This Section makes it the duty of the State Treasurer to transmit to the County Tax Collector the name and address of every such agent, as resides respectively in such county. It also provides, that counties, cities and towns may require a license tax of any such agent, not to exceed fifty per cent of the State tax.

Section 24, provides, that *each* insurance company shall pay to the State Treasurer, for each traveling agent or solicitor doing business in this State, a license tax of twenty-five dollars *for such agent*. That counties, cities and towns may require from *any such traveling agent or solicitor* a license tax of *five* dollars for each county *he* does business in.

There is nothing in the foregoing sections which precludes the idea, that counties, cities and towns may levy a tax upon the persons engaged in the insurance business, or the business of soliciting such business, or representing persons engaged in such business. Sections 23 and 24, provide the amount which the counties, cities and towns may require, as a license tax from any such *agent* or *solicitor*, but Section twenty-two does not provide, what amount may be required, as a license tax, by counties, cities and towns from *insurance companies* doing business in this State, nor is there any thing in the section which precludes the idea that counties, cities and towns may impose a license tax upon insurance companies, associations or individuals doing insurance business therein.

Section 1, of the act provides that, "No person shall engage in or manage the business, profession or occupation mentioned in this act, unless a State license shall have been procured from the Tax Collector, or State Treasurer," etc. This section contemplates the payment of a State license tax in some cases to the State Treasurer.

Section 2, of the act, provided that, "Counties and incorporated cities and towns may impose such further taxes of the same kind, upon the same subjects, as they may deem proper unless otherwise provided in this act, when the business, profession or occupation shall be engaged in within such county, city or town." The Section provides that the tax imposed shall not exceed fifty per cent of the State tax. The section further provides, that such county, city or town may impose taxes on any business, profession or occupation not mentioned in this act, when engaged in or managed within such county, city or town. The question is, whether an insurance company, association, firm or individual doing business in this State, may be required by counties and incorporated cities and towns to pay a tax on the license or occupation in which it is engaged when the business is engaged in within such county, city or town. That such authority is granted by Section 2 of the act is clear, and that there is nothing thereafter in the act which deprives the counties and incorporated cities and towns of such power is also clear to my mind. The amount of tax they are authorized to levy is fifty per cent of the State Tax. The amount of license tax required of insurance companies to be paid the State is two hundred dollars.

I am also of the opinion that counties and incorporated cities and towns may impose taxes on the business of any corporation, association, firm or individual doing a Sick Benefit Insurance business in this State, within such counties and incorporated cities or towns.

Yours truly,

W. H. ELLIS,
Attorney General.

LICENSE TAX.

Tallahassee, Florida, Oct. 21st, 1904.

Hon. A. C. Croom,
Comptroller,

Dear Sir—Your letter of the 10th enclosing letter from Wilson & Toomer Fertilizer Company, relating to a license tax upon the occupation of "Manufacturer of Fertilizer" has been received.

4 Atty

You ask for my opinion upon the question presented by the letter above mentioned.

I understand from the letter referred to; That Wilson & Toomer Fertilizer Co., is a corporation or copartnership engaged in manufacturing fertilizers in this State and that the company sells only its own production.

Chapter 4983 laws of 1901 provides for a "license fee" or tax of twenty-five cents per ton to be paid to the State Treasurer by every Manufacturer, importer, agent or seller of commercial fertilizer, cotton seed meal, castor pomace, etc., offered for sale in this State.

The act of 1903, Chapter 5106 does not impose any additional tax, as occupational or license tax upon manufacturers of fertilizers.

As to whether a manufacturer, may be taxed as a merchant under the 17th section of Chapter 5106, I have to say, That it is my opinion that so long as the manufacturer confines his sales to his own productions he would not be liable for the tax upon merchants, storekeepers and druggist provided for in said section.

I herewith return the letter from Wilson & Toomer Fertilizer Company.

Yours truly,
W. H. ELLIS,
Attorney General.

RELATING TO STATUTES.

Tallahassee, Fla., Oct. 21st, 1904.

Hon. B. E. McLin,
Commissioner of Agriculture.

Dear Sir—In compliance with your request noted upon letter from Samuel Gompers, President American Federation of Labor, addressed to yourself, dated October 10th 1904, in which he asks for copies of the following laws:

"The Hours of Labor; Ventilation of Mines; Supports of Mines in which Men Work; Check Weighmen; Safety Appliances for Machinery in Workshops; Child Labor; Compulsory School Attendance; Lien Laws; Extent of Exemption from Judgments in Courts; Sanitary Conditions of Factories, Workshops, Mills, Mines, Homes, etc." I beg to advise, that there is no Statute in this State upon the following subjects: "Ventilation of Mines; Supports of Mines in which Men Work; Check Weighmen; Safety

Appliances for Machinery in Workshops; Child Labor; Compulsory School Attendance; Sanitary Condition of Factories, Workshops, Mills, Mines, Homes, etc."

Chapter 5143, laws of 1903, embodies the lien law of this State, "For Material Men, Mechanics, Artisans and Laborers."

Chapter 5, Art. 1, Sections 1998 to 2004 inclusive covers the law in this State upon the subjects of Homestead and Exemption.

Chapter 4971, laws 1901, Relates to the Prevention of Cruelty to Children and to Rescue Children from Immoral Surroundings.

Chapter 4199, laws of 1893, Relates to the Hours of Trainmen on Railroads in this State, and is the only statute in this State upon the subject of, "The Hours of Labor."

I herewith return letter from Mr. Samuel Gompers, President American Federation of Labor.

Yours truly,

W. H. ELLIS,

Attorney General.

FRANKLIN COUNTY ARMORY.

Tallahassee, Florida, Nov. 1, 1904.

Hon. W. S. Jennings,

Governor of Florida,

Tallahassee, Florida.

Sir—By act of the Legislature Chapter 5284, Session 1903, the sum of Twelve Thousand Dollars or as much thereof as may be recommended by the board of appraisers, provided for in the act, and approved by you, was appropriated for the purchase from the County of Franklin of the following described lot to-wit: "All that certain piece, parcel, lot or tract of land situated lying and being in the county of Franklin, State of Florida, and more particularly described as lot one (1) Block nine (9), in the city of Apalachicola, according to the map or plan thereof now in general use,—Together with all and singular the rights, tenements and appurtenances thereto belonging or in anywise appertaining."

Section three of the Act provides, that the Attorney General shall examine the title of said property and upon his making a report of its validity to the Governor,

and upon its approval by the Governor and the making and delivering to the Governor of the State of Florida and his successors in office, of a good and sufficient deed for such property, duly executed by the County of Franklin, the Comptroller is authorized to draw his warrant for so much of the twelve thousand dollars, as may be recommended by the board of appraisers and approved by the Governor as provided for in the act.

It is the duty therefore of the Attorney General to examine the title to the property and make a report to your Excellency upon the quality of the title held by the County of Franklin.

I have examined an abstract of the title to the property in question and certain certified copies of the record of deeds and seven original deeds referred to in the abstract and certain affidavits of citizens of Apalachicola, Florida, relating to the possession of the property. All of the above mentioned documents were furnished to me by Hon. W. J. Oven, of Franklin County Florida, and constitute the evidence of title in Franklin County to the property therein described.

From these documents it appears that Franklin County claims title under two deeds of conveyance from J. E. Grady, one dated September 15, 1897, and one June 9th 1904. The latter deed recites a consideration of "One dollars and other valuable considerations." J. E. Grady claimed title by inheritance from his wife Alice S. Grady, the date of whose death is not given, and by deeds of conveyance from Mrs. Maggie Henry and her husband, John C. Henry, dated April 23rd 1904, Mrs. Elizabeth Feahney, widow, Mrs. Jennie Pearce, widow, Chas. Feahney and his wife Grace Feahney, dated March 15th 1904, and Mrs. George Lucas, widow of John N. Lucas, H. L. Grady, Miss Elizabeth Grady, Mrs. Cornelia E. Parlin and husband, C. H. Parlin, T. B. Villeau and his wife Mary Villeau, and E. C. Smith, dated March 11th 1904, heirs of John Lucas, who it is claimed was once owner of the property and who died between the years 1845 and 1855.

Mrs. Alice S. Grady claimed title under deeds of conveyance from Catherine Baker and William N. Baker, dated July 20th 1885, conveying an undivided half interest and from M. C. Pickett and his wife Rachael K.

Pickett, dated June 25th 1885, conveying an undivided half interest.

Catherine Baker claimed, as widow of N. Baker and under deed from John E. Donaldson, dated October 20th 1882 and his wife's relinquishment of dower dated April 31st 1883.

W. N. Baker claimed as son and heir of N. Baker and under deed from Robert G. Baker and his wife Harriet L. Baker, dated October 24th 1882. Each of the above deeds purported to convey to the grantees an undivided one half interest.

The date of the death of N. Baker is not shown, his heirs it is claimed, were Mary Baker, daughter of N. Baker and wife of John E. Donaldson, W. N. Baker, Robert G. Baker, sons of N. Baker and Catherine Baker, his wife. Mary Baker died without issue, her husband John E. Donaldson, surviving her.

There are in the affidavit of J. E. Grady, and in the deed from Mrs. George Lucas, et al., to J. E. Grady, dated March 11, 1904, statements that N. Baker and M. C. Pickett, purchased the lot "At an administrator's sale of the property of John Lucas." His death was prior to the date of the Tax deed to M. C. Pickett, dated April 13th 1875. The date of the "Administrator's sale" is, not given, if it was prior to the date of the tax deed and any title was acquired by M. C. Pickett, under the "Administrator's sale" and he was tenant in common with N. Baker of the property, when the same was assessed and the tax deed executed, he acquired no title under that deed. If on the other hand, he acquired title under the tax deed and the "Administrator's sale" did not occur until a date subsequent to the assessment and sale of the property for taxes, then, no title passed by the "Administrator's sale."

If M. C. Pickett's title depends upon the tax deed, then he is, or his heirs, if he is dead, were tenants in common with Alice S. Grady, because M. C. Pickett and his wife Rachel K. Pickett only conveyed to Alice S. Grady, an undivided one half interest in the lot by the deed dated June 25th 1885, and her husband therefore claiming as her sole heir could only convey to the county the interest which he inherited.

It is useless therefore to consider the question of the validity of the tax sale and deed to M. C. Pickett based

thereon, for if he claimed title thereunder when he conveyed to Mrs. Alice S. Grady, and such tax sale was valid and the deed executed thereunder conveyed title to him, he only conveyed an undivided half interest to Mrs. Grady and the county's interest therefore could be no greater. Upon this line of the title therefore I cannot report favorably.

The conveyance from Catherine Baker and W. N. Baker to Alice S. Grady conveyed only an undivided half interest, representing the interest which it is claimed was acquired by N. Baker at the "Administrator's Sale" of the property of John Lucas. The other half interest it is claimed was acquired by M. C. Pickett at the "Administrator's Sale." The abstract does not show the history of the title beyond the deeds from R. G. Baker and John E. Donaldson to Catherine Baker and W. N. Baker, executed in 1882. It is not shown how N. Baker acquired title, there is no evidence of the "Administrator's Sale" or the regularity of the proceedings, this however may be cured by the deeds from the heirs of John Lucas, executed in 1904. But the abstract shows no title in John Lucas, nor does it show that title has ever passed out of the United States Government or that the property in question was a part of the "Forbes Purchase" or formed a part of any Spanish Grant. Upon this line of the title therefore I can not report favorably.

The question of title by adverse possession is presented, but as the abstract does not show that title has not passed out of the United States Government, nor that it was never in the government, it is impossible to say that adverse possession has begun to run. Adverse possession can not exist against the government. To constitute a possession such as will bar the title of the owner, the possession must be adverse, notorious and open, that is actual, visible, and exclusive, continuous and under claim of title under an instrument in writing as being a conveyance of the premises in question or upon the judgment or decree of a competent court and such possession has continued for seven years. These different elements of adverse possession are questions of fact and may be considered established when found by a jury and then, final only, as to the parties to the suit.

I can not therefore, declare the title of Franklin County to the property in question valid.

Respectfully submitted,

W. H. ELLIS,
Attorney General.

CERTIFICATION OF TEACHERS.

Tallahassee, Florida, Dec. 20th, 1904.

Hon. W. N. Sheats,

State Superintendent Public Instruction,
Tallahassee, Florida.

Dear Sir—Your letter of December 15th, 1904, referring to Section 13 of Chapter 5204 laws of 1903 has been received.

You ask my opinion on the following questions:

1st "Should each of these certificates show an average grade of 90 per cent or will it be sufficient for the combined average grade of any two or three of these certificates to equal 90 per cent?"

2nd. "What could be the effect if the applicant after teaching six years under two certificates averaging 90 per cent, fails in a subsequent examination to make 90 per cent, or fails to take a first grade certificate?"

3rd. "What should be the effect if the applicant, after teaching six years under two certificates averaging 90 per cent, ceases to teach but engages in other educational work requiring no certificate?"

Chapter 5204 is a revision of the subject of the "Certification of teachers," but does not amend or repeal Chapter 4192 Acts of 1893 as amended by Chapter 4331 Acts of 1895 and Chapter 4991 Acts of 1901, so far as the same relate to uniform and fair examinations.

The Act of 1903 made no change in the law as to the subjects upon which an applicant for a first grade certificate must be examined and the grade of proficiency to be made in the examination. Section thirteen of the Act provides for a kind of reward to teachers for excellence and proficiency in knowledge and experience in service. Under the first paragraph of the section, the holder of a first grade certificate (which has not expired) who has served twenty years as teacher in this State, having served nine of the twenty years under certificates issued since January 1st A. D. 1894, may have

his certificates endorsed by any county Superintendent in the State, under the conditions expressed in the section, which continues the validity of the certificate during the life of the holder. Thus a reward is provided for experience shown by the years of service and for proficiency shown by a first grade certificate. The purpose of the act is to encourage efficiency in Pedagogy and it should be construed with that object in view.

The second paragraph of Section thirteen of Chapter 5204 of the Acts of 1903 provides for the issuing of "first grade life certificates," based upon six years service as teacher under first grade certificates issued since January 1st A. D. 1894, showing a certain required average grade of proficiency. To have taught six years under first grade certificates issued since January 1st 1894, one must have obtained two certificates. The question is what grade should these certificates show? The statute provides that, "The average grade of such certificate" shall be not less than 90 per cent. This can not mean that one may take two or three certificates or any two and compute the average of the average shown by the certificates selected, if indeed such can be done. An average is the mean between two extremes. The subjects upon which a first grade applicant is examined have been the same since 1893, except, Penmanship and Book-keeping, which are no longer subjects upon which an applicant for first grade is examined. Each certificate shows the grade made upon each subject at the examination upon which it was issued. These grades are added and the sum divided by the number of subjects, the quotient shows the average or mean grade between the lowest and highest. Five years later the average may be very much lower or very much higher. It would be just as unfair and inaccurate to add the average grade of the first certificate to the average grade of the last certificate when the average grade of the latter is much lower than the first, and say that the quotient of such sum divided by two, represents the present grade of proficiency of the applicant upon the subjects upon which he was examined, as to add such average grades when the average grade of the latter certificate is very much higher and going through the same process, say the result represents the true mean degree of proficiency. In the first case, the certificate may show an average of

100 per cent and the latter certificate 80 per cent; this is clearly retrogression, inefficiency. In the second case, the first certificate may show 90 per cent and the latter 100 per cent; this shows advancement, progress, development, efficiency. Should each of these certificate holders be rewarded alike? I think not, nor do I think such was the purpose of the statute.

In answer to your first question, therefore, I say that it is my opinion, that each certificate should show an average grade of 90 per cent. I am also of the opinion, that the last first grade certificate issued to the applicant should be one of the certificates presented, and if the teacher tried for a first grade certificate at the last examination and failed, such teacher would not be entitled to the benefits provided by the second paragraph of the section. I think that the phrase "Has taught school in this State for six years under first grade certificates," means six scholastic years next preceding the application for a first grade life certificate.

Yours truly,

W. H. ELLIS,

Attorney General.

COUNTY OFFICERS.

Tallahassee, Fla., December 27th, 1904.

Hon. A. C. Croom,
Comptroller.

Dear Sir—Your letter of the 22nd enclosing communication from Mr. B. F. Owens, of Bristol, Florida, and requesting my opinion upon the question propounded, has been received.

My understanding of the situation is: Mr. B. F. Owens, is now occupying the office of Tax Collector of Liberty County, was, at the last election elected to the office of County Judge, he has subscribed to the oath and filed his bond, which has been approved by the Board of County Commissioners. He desires to know if he should remain in the office of Tax Collector until his successor is qualified.

Section 14 of Article 16 of the Constitution provides that, "All State, County and Municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

The duty imposed by the above section rests alike upon the Tax Collector and County Judge.

Section 15 of Article 16 provides that, "No person shall hold, or perform the functions of more than one office under the government of this State at the same time; Provided, Notaries Public, Militia Officers, County School officers and Commissioners of Deeds may be elected or appointed to fill any legislative, executive or judicial office."

As Mr. Owens can not under the Constitution hold, or perform the functions of the office of Tax Collector and County Judge, at the same time, and he is required to continue in the office of Tax Collector until his successor is qualified, it follows that he cannot be qualified as County Judge until his successor is qualified as Tax Collector. And as the same duty rests upon the occupant of the office of County Judge to continue in office until his successor is qualified that office will be occupied until the successor to Judge Smith is qualified.

I herewith return letter of Mr. B. F. Owens.

Yours truly,

W. H. ELLIS,

Attorney General.

LETTERS OF THE ATTORNEY GENERAL.

The following are some of the letters written in answer to the unofficial communications referred to heretofore in this report. These letters are of a general character and may be of some benefit to the county officials, and for that reason are incorporated herein.

RAILROAD CROSSINGS AND CATTLE GUARDS.

Tallahassee, Fla., Feb. 24, 1904.

Dear Sir—Your letter of the 16th instant has been received. The statute referred to, Chapter 4188, Laws of 1893 has not been amended and has not been construed by the Supreme Court so far as I am advised.

I interpret the law to mean, that a railroad company operating a line of railroad in this State is required to erect a cattle guard and suitable crossing upon its railroad, upon each plantation, farm and pasture in actual cultivation and use, through which the railroad company maintains its line of road, when the company is petitioned so to do by five freeholders living near the plantation, farm and pasture. The petitioners may designate the point at which the cattle guard and crossing is to be built. The owner of the plantation living on or near the plantation may be one of the petitioners. I think that residence within two or three miles of the proposed crossing or cattle guard would come within the meaning of the statute requiring that residence of the petitioners be near the plantation. Each cattle guard and crossing must be the subject of a separate petition, one petition may embrace one cattle guard and one crossing. The proviso is uncertain in meaning but as the statute provides for a forfeiture on the part of the railroad company for failure to comply with such, it should be construed strictly. Placing a strict construction upon it therefore, a freeholder signing more than one petition would render the petition, so far as he was concerned, of no force. To secure a crossing and cattle guard the plantation, farm and pasture must be traversed by the railroad line and be in actual use and cultivation.

Yours truly,
W. H. ELLIS,

LICENSE TAX BILLIARD AND POOL TABLES.

Tallahassee, Fla., Feb. 24, 1904.

Dear Sir—Your letter of the 23rd instant asking a consideration of the latter part of, Section 36, Chapter 5106, Acts of 1903 which reads as follows: "provided that the license for billiard tables outside of and disconnected with a bar room or its proprietors shall pay a tax of ten dollars" is received. That proviso does not include pool as well as billiard tables.

Yours truly,
W. H. ELLIS,

SUPPLIES COUNTY OFFICERS.

Tallahassee, Fla., Feb. 24, 1904.

Dear Sir—I am in receipt of your letter of the 17th. Section 490 Rev. Stats. of Fla. does not provide for the furnishing of "supplies" by the County Commissioners to Justices of the Peace but merely directs the County Commissioners to purchase blank books and stationery from parties manufacturing them in this State, provided they can be bought on as fair and reasonable terms as elsewhere.

The County's Attorney is the proper one to advise the County Commissioners as to the County's duty in the matter of supplying stationery to Justices of the Peace.

Yours truly,
W. H. ELLIS,

STATE ATTORNEY.

Tallahassee, Fla., Feb. 25, 1904.

Dear Sir—Your letter of the 22nd instant to hand. The grand jury has the right to require the State's Attorney to attend its sessions for the purpose of examining witnesses in its presence and for giving advice upon any legal matter, and to issue subpoenas and other process to secure witnesses. I would suggest that if you, as a grand juror, desire any information or instruction as to your duties and responsibilities, that the judge of your court in his charge to the grand jury will enlighten you fully upon the subject.

Yours truly,
W. H. ELLIS.

Dic. W. H. E.

TAX COLLECTOR.

Tallahassee, Fla., March 2, 1904.

Dear Sir—Section 55, Chapter 5106, Laws of 1903 makes it the duty of the Tax Collector, before issuing a license based on the property valuation or capital stock to require the party applying for said license to file under oath, duly authenticated, a statement of the value of the property or the amount of capital stock. Section 1299 Rev. Stats. designates the officers who are authorized to administer oaths in this State. Chapter 5106 does not authorize the Tax Collector to administer the oath.

Yours very truly,

Dic. W. H. E.

W. H. ELLIS,

JUSTICE OF THE PEACE AND NOTARY PUBLIC.

Tallahassee, Fla., March 23, 1904.

Dear Sir—A Notary Public may offer himself for election to the office of Justice of the Peace without resigning his commission as Notary Public, and if elected may hold both the offices of Justice of the Peace and Notary Public.

Yours very truly,

Dic. W. H. E.

W. H. ELLIS.

SHERIFFS, POLICE OFFICERS, INTOXICATING LIQUORS.

Tallahassee, Fla., March 23, 1904.

Dear Sir—I am in receipt of your letter of 14th inst. and beg to call your attention to Chapter 4932, Acts of 1901. It provides that it shall be the duty of all Sheriffs, Deputy Sheriffs, Constables and Police Officers in their respective jurisdictions and they are authorized and empowered to enter any building, booth or tent with or without a warrant in which they have good cause to suspect that intoxicating liquors are kept for sale contrary to law. That constitutes the only detective force which the people can rely upon to detect or bring to light the crimes of which you complain unless some private detective agency be called upon.

Yours very truly,

Dic. W. H. E.

W. H. ELLIS.

REGISTRATION BOOKS.

Tallahassee, Fla., March 23rd, 1904.

Dear Sir—Chapter 5249, Acts of 1903 provides that whenever the State, Congressional or County Committee of any political party which at the last preceding election cast 40 per cent of the votes cast, shall have called a primary election to be held prior to the time for registration for a general election, the registration books of each county shall be open in each election district for four weeks for registration. This act, of course, makes such registration legal. The registration is conducted in the same way and subject to the same laws as registration for a general election. Certificates may be issued to the voter and he may vote at the general election in November without having to register again.

Yours truly,

Dic. W. H. E.

W. H. ELLIS.

REGISTRATION.

Tallahassee, Fla., March 23, 1904.

My dear Sir—Section 8, Chapter 4328, Acts of 1895, provides that upon application for *registration* each elector shall be required to take and subscribe to an oath that he has been a resident of the county for six months. Section 1 of that act provides that every male person of the age of 21 years and upwards that shall, at the time of *registration* be a citizen of the United States and shall have resided and had his habitation, domicile, home and place of permanent abode in the county for six months and in Florida for one year, if otherwise qualified according to law in such county, shall be deemed a qualified elector. The Act of 1903 simply provides for the opening of registration books for registration, and I suppose in order to register he will have to come up to the same requirements that the law prescribes for registration prior to the general election. It seems, therefore, that unless you could subscribe to the oath at the time you apply to register you could not vote in the primary.

Very truly yours,

Dic. W. H. E.

W. H. ELLIS.

REGISTRATION.

Tallahassee, Fla., April 2nd, 1904.

Dear Sir—Your favor of March 29th to hand.

A person applying for registration must appear at the time he makes such application be twenty-one years of age. The oath required by Section 3, Chapter 4328, Laws of 1895 must be taken by the person applying for registration.

A man is not relieved of the duty of voting because of a temporary removal from the county in which he has duly registered according to law. There would have to be a change of residence from one county to another before he is relieved from the duty of voting in the county in which he is registered.

Under Section 18, Act of 1895 it becomes the duty of an elector when he removes from one district to another in the same county to notify the Supervisor of Registration of such change of residence and surrender his certificate of registration. In case of his failure or refusal to notify the Supervisor of Registration of his removal, it becomes the duty of the Supervisor of Registration, upon the fact of such removal being brought to his knowledge to erase the name of such person from the registration books. The section further provides that no elector who having previously registered and who shall have removed from one district to another in the same county shall be allowed to register, nor shall he be allowed to vote by the managers of any election without a certificate of transfer as provided in the act.

I think this section prevents an elector who has changed his residence from one district to another district in the same county from voting in the district in which he was originally registered.

Yours very truly,

W. H. ELLIS,

REGISTRATION.

Tallahassee, Fla., April 2, 1904.

Dear Sir—Your letter signed, "Supervisor of Registration, Nassau County, Florida" has been received.

The records here show that the Supervisor of Registration lives at King's Ferry, but as your letter is dated

at Fernandina, I presume that you desire to have this reply addressed to the Fernandina postoffice.

You ask four questions concerning the registration of voters at this time. I will answer them in the order propounded.

1st. A person who registers now becomes, under the law, a legally registered voter and may vote in the precinct in which he registers at the general election without registering again.

2nd. The books are opened for the registration of all voters regardless of political affiliation.

3rd. A person applying to register must swear that he is twenty-one years of age; that he has been a resident of the State of Florida for twelve months and of the county for six months; that he is a citizen of the United States and that he is qualified to vote under the Constitution and laws of the State of Florida and that he will protect and defend the Constitution of the United States and of the State of Florida. You will see from this oath that the person who applies for registration must be at that time twenty-one years of age.

4th. The registration is conducted under the law of 1895, Chapter 4328.

Yours very truly,

Dic. W. H. E.

W. H. ELLIS.

REGISTRATION.

Tallahassee, Fla., April 2, 1904.

Dear Sir—My opinion is that the Act of 1903 simply provides for another opportunity to register and that such registration is conducted in the same way as under the Act of 1895, Chapter 4328. It is true that the act of 1903 is not as full as it might be, but still I think it ought to be construed liberally.

Yours very truly,

Dic. W. H. E.

W. H. ELLIS.

STATE ATTORNEY.

Tallahassee, Fla., May 27, 1904.

My Dear Sir—I am in receipt of your communication of the 24th. The Statute law of the State so far as it relates to the duties of a State Attorney, is, as you

know, rather vague and insufficient. To an officer who desires to perform his full duty toward the people, the law may appear to be sufficiently flexible to afford him affirmative authority for the performance of any act in the line of his official duties, as those duties are generally understood by the profession to appertain to that office. On the other hand, a person occupying the position of State Attorney, who intends to do only that which the law specifically and affirmatively directs and commands him to do, will find no end of limitations upon his authority, and his duties exceedingly narrow and circumscribed.

As for me, I am disposed to place a liberal construction upon our statute law which relates to the duties of State Attorney. While applications for writs of habeas corpus are usually ex parte proceedings, I can imagine instances in which it would be of great importance for the State to be represented, and it may not be improper in all criminal cases where a writ of habeas corpus is applied for, for the State to be made a party. Section 1344 of the Revised Statutes makes it the duty of the State Attorney to appear in the Circuit Court within his Judicial Circuit and prosecute or defend on behalf of the State all suits, applications or motions, civil or criminal in which the State is a party. I think that in every step taken in a criminal prosecution, the State should be represented. The importance of a case is a matter which should be taken into consideration, and that is left to your discretion. If the Bradford County case is one of especial importance I suggest that you attend the hearing.

There is no provision for the payment of fees and expenses; that is the fault of the Legislature in omitting to provide therefor, but that should not stand in the way of the discharge of one's duty.

If I can be of service to you at any time, command me.

Yours very truly,

Dec. C.

W. H. ELLIS.

5 Atty

RECORDING DELINQUENT TAX LIST.

Tallahassee, Fla., May 30, 1904.

Dear Sir—Your letter of the 25th to hand. I understand that you wish to have my opinion upon the following question: Should the advertisement of the delinquent tax list which the law requires the Tax Collector to make out and cause to be published be recorded in the county clerk's office?

In answer to that question I say, yes. In the first place the law requires it to be done, Sec. 10, Chap. 4515, Acts 1897. That alone is a sufficient reason why it should be done. But there is another reason which may account for the existence of the law. The publication of the delinquent list is necessary to the validity of the sale. It furnishes the notice to those who have failed to pay their taxes. Recording the advertisement in a certain office preserves an official, authentic and permanent record of the notice.

As for compensation, the Act of 1897 which is amendatory of the Act of 1895 failed to provide for any compensation to be paid to the clerk for recording the notice.

Yours truly,

W. H. ELLIS.

TEACHERS CERTIFICATES.

Tallahassee, Fla., June 11, 1904.

Dear Sir—I hope you will pardon delay in my reply to your letter of recent date. I am afraid that I do not quite understand your question. The Act of 1903, Chapter 5204 does not provide for extending the time for which teachers certificates were issued, except in the case of primary certificates, which, under Section 8 of the above named Act are valid for four years, and first grade certificates which are good for five years. County Superintendents, under Section 13 of that Act may, under the conditions therein specified, endorse first grade certificates making them perpetually valid during the life of the holder. Under the same Section the County Superintendent may issue to the holder of the first grade certificate issued since January 1st, 1904, a first grade life certificate good in any part of the State and of perpetual validity in the county where such en-

dersement is made. No certificate issued since January 1st 1894 is rendered void by the Act of 1903. There were no "special or primary" certificates issued under the Act of 1893, Chapter 4192.

I hope I have answered your questions in the foregoing.

Yours truly,

W. H. ELLIS.

JUSTICES OF THE PEACE DEMANDING COSTS BEFORE INVESTIGATION.

Tallahassee, Fla., June 26, 1904.

Dear Sir—Your letter of the 13th asking for my construction of Section 2996 Revised Statutes has been received.

I think that it is the purpose of the Statute to vest in the Justice's of the Peace a discretion in the matter of demanding the payment of costs or security for same in the advance of an investigation. The Section has been so constructed in one or two counties in this State and I think the construction is eminently proper.

Very truly yours,

W. H. ELLIS.

TRANSFER OF REGISTRATION CERTIFICATE.

Dear Sir:

Tallahassee, Fla., June 22, 1904.

Your letter of the 16th would have received immediate attention, but for several days I was confined to my room with fever and the correspondence accumulated on my desk to such an extent that the answer to your letter was delayed.

Section 15, Chapter 4328 provides that when an elector is registered he shall be furnished by the Registration officer with a certificate of registration. No person is permitted to vote in any other election district than the one in which he is registered. The same section gives a form of a transfer certificate. Section 18 of the same Act provides that in case of the removal of an elector from one district to another district in the same county he must notify the Supervisor of Registration of such change. The Supervisor is required to enter the fact upon the registration books and *issue* to the voter a *transfer certificate*. He then becomes duly registered in the precinct to which he has removed and can vote.

Very truly yours,

W. H. ELLIS.

GARNISHMENT.

Tallahassee, Fla., June 22, 1904.

Dear Sir—I think that your position with regard to writ of garnishment is correct. The principle is that the embarrassment and delay in the administration of public affairs likely to ensue from submission to such process is sufficient reason for holding the government of the State from garnishment process. The possession of an officer is deemed in law the possession of the government itself and such exemption can not be avoided by garnishment of the treasurer or other officer or agent through whom payment of the government creditors is usually made, and it was held by the Supreme Court of the United States that a clerk in the War Department through whom the salaries of clerks in that department were paid was not subject to garnishment. In Massachusetts it was held that a State lunatic hospital under the control and government of the State of Massachusetts was not subject to garnishment.

Very truly yours,

W. H. ELLIS.

CRIPPLES, PEDDLE WITHOUT LICENSE.

Dear Sir:

Tallahassee, Fla., June 22, 1904.

Your letter of June 20th to hand. Section 54 of Chapter 5106, Laws of 1903 provides that all cripples or other parties physically incapable of manual labor shall be allowed to peddle without paying a license, using their own capital in the counties in which they live; also to drive a public hack or dray without paying a State, County or City license, provided the hack or dray belongs to himself. The exemption does not apply to the sale of spirituous, vinous or malt liquors. Chapter 4667, Laws of 1899 provides for a similar exemption in favor of ex-Confederate soldiers to peddle. You will observe that these statutes do not provide for his conducting any other business than that of peddling or draying without license.

Very truly yours,

W. H. ELLIS.

SUPERVISOR OF REGISTRATION CUSTODIAN,
REGISTRATION BOOKS.

Tallahassee, Fla., July 2nd, 1904.

My dear Sir—Your letter of the 24th ult. has been received. I have just returned from a short visit to Atlanta which accounts for the tardiness of my reply.

In regard to the matter to which you refer, I have to say, that Section 20 of Chapter 4328 laws of 1895 seems to vest in the Supervisor of Registration a certain discretion as to what may constitute indiscriminate handling of the registration books; that section clearly authorizes any elector at any time to examine them as to the status of his own name upon the books of the election district to which he may belong, but it seems also to prohibit the indiscriminate handling or examining of the books by any one.

The Supervisor of Registration is by law made the sole custodian of the registration books, it is for him to decide what constitutes indiscriminate handling. His other duties are prescribed by law and an examination of the entire subject may throw more light upon the question.

Yours very truly,

W. H. ELLIS.

TAX SALE CERTIFICATES.

Tallahassee, Fla., July 2nd, 1904.

My dear Sir—Your favor of recent date to hand. The law referred to concerning cancellation of certificates of tax sale, does not provide for payment by any one for the cancellation of certificates, which appear on their face to be illegal, void or erroneous in their description or otherwise. It would seem to be a hardship upon the owner of the property to charge him with cancellation fees of tax certificates issued upon the sale of his property which sale may be void. And Sec. 1305 of the Revised Statutes provides that "No officer shall charge for any constructive service, and no fees shall be charged in any case, or for any official service performed, unless said fees be expressly authorized and their amount specified by law." There is certainly nothing in the

statute which authorizes the expense of such cancellation to be paid by the county.

Yours very truly,
W. H. ELLIS.

TRANSFER OF COUNTY FUNDS. NOT AUTHORIZED—SETTLEMENT OF TAX COLLECTOR.

Tallahassee, Fla., July 8th, 1904.

My dear Sir—Your letter of the 2nd has been received. The question as propounded to me, is one which is involved in some difficulty, and has required considerable thought and investigation.

I have arrived at the conclusion that the county commissioners are not authorized to direct the county treasurer to transfer to the Road and Bridge fund, the money collected and turned over to him by the collector on account of the tax to pay outstanding indebtedness. I take it that the phrase, "outstanding indebtedness," as used in the Acts of 1903, relates to such indebtedness as the county is authorized by law to contract. When the county commissioners exceed their authority and contract indebtedness in the name of the county, it is not within the meaning of the Act a debt due by the county. When a tax is laid and collected for outstanding indebtedness, a distinct fund is created, which fund must be devoted to the payment of such indebtedness then outstanding, which the county commissioners were authorized under the law to create against the county.

As to the last question, "Can the county commissioners force the Tax Collector to a settlement on the tax books of last year at any certain time?" I have to say, that the law requires the Tax Collector to make a "Final report to and settlement with the Comptroller and County Commissioners on or before the first Monday in July." This I take to be a ministerial duty, and the Tax Collector therefore, can be compelled by mandamus to make the report required by law.

Of course the mandamus cannot control the character of his report, but he can be required to make his report.

Yours very truly,
W. H. ELLIS,

OFFICE HOLDING.

Tallahassee, Fla., July 8th, 1904.

Dear Sir—Your letter of recent date to Hon. J. B. Whitfield, Attorney General, was given to me by that gentleman for reply.

You ask, if there is any thing in the laws of this State to prevent you from acting in the capacity of County Commissioner and Postmaster at the same time. I have to say that Sec. 15 of Art. 16 of the Constitution of the State of Florida provides: that, "No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of more than one office under the government of this State at the same time; provided, Notaries public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office."

I think that the office of Postmaster is an office under the government of the United States and any one occupying or exercising the functions of that office would be precluded under the Constitution of this State from holding the office of County Commissioner which is an office of honor and profit under the government of this State.

Yours very truly,

W. H. ELLIS.

COUNTY COMMISSIONERS.

Tallahassee, Fla., Sept. 15, 1904.

Dear Sir—Your favor of the 26th ultimo has been received. I have just returned to Tallahassee and hasten to reply.

First, I want to thank you for the post-scrip.

The power is vested in the County Commissioners to order any "book or books" transcribed whenever the same are not properly bound or mutilated. Sec. 1391 of the Revised Statutes requires the Clerk to keep a record of deeds, in which shall be recorded all deeds, etc., and a record of mortgages, in which he shall record all mortgages, etc. This seems to require two books, one for the

record of deeds and the other for the record of mortgages.

Now under Section 578 Revised Statutes, the County Commissioners may order the Clerk to transcribe any book or books. The act does not authorize them to eliminate in their orders, deeds which appear to be defective or irregularly recorded, or instruments which were not entitled to record in that particular book. The whole book must be transcribed.

The order should read in substance as follows: "It was ordered that the County Clerk transcribe book No." The County Commissioners have no power to eliminate from that book any instrument, which may have been recorded properly or improperly therein.

Yours truly,

W. H. ELLIS.

P. S. These are questions however for the County Attorney, as you remarked.

LICENSE, COUNTY JUDGE.

Tallahassee, Fla., Sept. 15, 1904.

Dear Sir—Your letter of the 31st ultimo has been received. I have just returned to Tallahassee and hasten to reply to your communication.

You insist that the County Judge is required by the Constitution to issue all licenses required by law to be issued in the county and that he does not issue the licenses as contemplated by the Constitution, when he signs them, affixes the seal of his office thereto and delivers them to the Collector for delivery to the licensee.

Section 17 Article 5 of the Constitution prescribing the powers and duties of the County Judge; among other things provides: that the County Judge "Shall issue all licenses required by law to be issued in the County."

Section 6 Article 8 of the Constitution provides that the powers, duties and compensation of the Tax Collector shall be prescribed by law.

Section 5 Article 9 of the Constitution provides that "The Legislature may also provide for levying a special capitation tax and a tax on licenses."

Now an occupational tax or license tax such as is contemplated by Chapter 5106 Acts of 1903 and similar acts, is merely a tax on the vocation or business described

in the act or more properly a tax on the licenses provided by the act to be issued. A license is a legitimate subject of taxation as property. Mr. Justice Cooley says, that the power of taxation extends to every trade or occupation and to every species of possession. Part of the revenue for State and county is raised by this tax on licenses. The license is not issued until the tax on the vocation or license is paid. The Tax Collector does not issue it, (Although Section 58 Chapter 5106 Acts of 1903 seems to indicate that he does) his signature merely shows that the tax thereon has been paid. The County Judge signs the license, affixes the seal of his court and issues the license, the same remaining in the Tax Collector's hands until the tax thereon is paid. The Statute which requires the Tax Collector to "fill out and sign each license before issuing the same to person or persons paying him the necessary amount therefor" does not conflict with Section 17 Article 5 which requires all licenses issued in the county to be issued by the County Judge. The custom which the County Judges follow, of signing several licenses in blank and affixing the seal of their office thereto is merely a matter of convenience. The Statute prescribes the fee to be charged by the County Judge for issuing the license.

Section 67 Chapter 4322 Acts of 1895 as amended by Chapter 4515 Acts of 1897 prescribes the compensation of the Tax Collector.

I think that under the present system the County Judge issues the license as contemplated by the Constitution.

You understand of course that this opinion is given as a matter of courtesy to you. It is no part of my official duty to render it and can not therefore be considered as an opinion of the Attorney General.

Yours very truly,

Die. W. W. T.

W. H. ELLIS.

SHERIFF'S FEES.

Tallahassee, Fla., Sept. 15, 1904.

Dear Sir—Your letter of the 12th ultimo received.

Section 1255 Revised Statutes fixes the compensation and fees to be charged by Sheriffs. The section does not provide for a fee of \$2.00 per day for attendance upon

County Judge's Courts or Courts of Justice of the Peace.

Section 2846 and 2848 Revised Statutes as amended by Chapter 4384 Acts 1895, do not provide for such fee. I therefore think the charge of \$2.00 per day for attendance upon Courts of Justice of Peace or County Judges improper.

Yours very truly,
W. H. ELLIS.

LICENSE TAX.

Tallahassee, Fla., Oct. 10th, 1904.

Dear Sir—Your letter of the 7th has been received. I understand your position with regard to the license tax upon physicians to be; that because you and your father are in co-partnership in the practice of medicine and surgery, that the firm only is taxable and not the individual members thereof. The conclusion to which your contention leads is as follows: if there were five physicians constituting one firm or partnership, the proportion of taxes born by the members of that co-partnership would be only one fifth of the tax imposed upon physicians practicing singularly. The Statute was designed to prevent that inequality in the manner of imposing occupational taxes upon physicians, lawyers and others. So section 5, chapter 5106 acts of 1903, provides that the following enumerated *individual* license taxes shall be paid to the State by the persons engaging in, making or transacting the several occupations or profession named, to-wit: Lawyers \$10.00, Dentists \$10.00, Physicians \$10.00. The case of the merchant cited in your letter is not parallel, because the theory upon which taxes against merchants rest, is that they shall pay in proportion to the amount of capital stock employed in their business. Section 17 of the Act, provides that merchants, storekeepers and druggists with a capital stock of less than One thousand dollars, shall pay to the State a license tax of three dollars, and for every additional one thousand dollars or fraction of a thousand shall pay a license tax of three dollars per thousand up to ten thousand dollars. In excess of ten thousand dollars, two dollars, on each additional thousand, in each county and for each place of business.

So I am of the opinion, that each physician practicing his profession in this State is required to pay a State tax of ten dollars, whether he is in co-partnership with any one or is practicing alone.

Yours truly,
W. H. ELLIS.

COMPENSATION COUNTY SUPT. PUB. INSTRUCTION.

Tallahassee, Fla., November 5th, 1904.

Dear Sir—Your letter of the 3rd has been received.

I have considerable hesitancy in answering the questions you propound, for the reason, that as the law does not constitute the Attorney General the legal adviser of the County Boards of Public Instruction, his advise even though asked by the County Superintendent may be regarded as gratuitous by the Board.

My opinion therefore may be of very little value to you.

Article VIII Sec. 6 of the Constitution provides for the election of County Superintendents of Public Instruction, and that their powers, duties and compensation shall be prescribed by law.

Section 236 Revised Statutes, provides that each County Board of Public Instruction is constituted a body corporate. The duties and powers of the Boards are prescribed by Section 242, the eleventh paragraph of which provides, that they shall fix the compensation for the services of the County Superintendent of Public Instruction. Sec. 239 provides, that the County Superintendent of Public Instruction shall be secretary of the board. Section 246 and amendments thereto prescribe the duties of the County Superintendent.

The purpose of the law seems to be to place the school interests of the county largely in the hands of a corporation to be known as "The Board of Public Instruction for the County of _____ State of Florida." In this body is vested the discretion of fixing the compensation of the County Superintendent. I think this discretion should not be abused and I am of the opinion that it may be controled by the courts to the end that its discretion may not be abused.

In fixing the compensation of the Superintendent the

Board should have due regard for the character and volume of the Superintendent's duties, as those duties are prescribed by law and entailed upon him by the Board as its secretary. They may in their discretion allow a salary to the Superintendent as clerk, separate from his compensation for other services, having a due regard always to the total of his salary as measured by the character and volume of his duties.

Yours truly,

W. H. ELLIS.

FISHING WITH NETS.

Tallahassee, Fla., November 10th, 1904.

Dear Sir—Your letter of recent date addressed to H. T. Ellis, and asking for some information concerning the law regulating the fishing with nets in Biscayne bay has been received. I refer you to Chapter 4557 Laws of 1897 and Chapter 4987 Laws of 1899.

It is not within my the scope of duty to advise county officials upon matters pertaining to their office, and I would suggest that you obtain the advice of the county solicitor.

Yours truly,

W. H. ELLIS.

COUNTY BOARDS PUBLIC INSTRUCTION.

Tallahassee, Fla., November 26, 1904.

Dear Sir—County Boards of Public Instruction are elected at the general election in November every two years and the term of office of each member thereof begins on the first Tuesday after the first Monday in January after the election. It is impossible for the members of the new board, constituting one Board of Public Instruction to meet with the members of the old board, constituting another Board of Public Instruction, for there can not be more than one County Board of Public Instruction in each county at the same time. The term of office of the old board ends with the first Monday in January, the term of the new board begins with the first Tuesday after the first Monday in January. It is therefore perfectly clear that two county Boards of Public Instruction can not exist at the same time. If they can

not exist at the same time, then one board can not meet with the other as a board.

Dic. E. T.

Yours truly,
W. H. ELLIS.

COSTS, NOT CHARGEABLE IN CERTAIN CASES.

Tallahassee, Fla., November 26, 1904.

Dear Sir—The Constitution provides, Section 9 Article 16, as follows: "In all criminal cases prosecuted in the name of the State, where the defendant is insolvent or discharged, the State shall pay the legal costs and expenses, including the fees of officers, under such regulations as shall be prescribed by law."

Chapter 4323 as amended in 1897, 1899 and 1903, and Section 2843 Revised Statutes, Chapter 4401 Laws of 1895 and Chapter 5131 and 5132 of the Acts of 1903 and other enactments constitute the regulations prescribed by law for the payment of costs by counties in criminal cases. The Exhibition of articles of the peace against a person is not a criminal prosecution, that is to say, it is not the prosecution of a criminal case. It is a criminal proceeding, but it can not be said to be the prosecution for a crime committed.

The matter of issuing the warrant is within the discretion of the Justice of the Peace, if the party fails to deposit sufficient money to cover the costs of the proceeding. I am doubtful if the Justice of the Peace has the authority to commit a man against whom the Peace has been sworn for his failure to pay costs and in view of the fact that this proceeding is not a criminal case or prosecution within the meaning of the Constitutional clause above referred to and Legislative enactments upon the subject, I am inclined to the opinion that costs accruing in such proceedings are not properly chargeable against the county.

Dic. E. T.

Yours truly,
W. H. ELLIS.

PHARMACISTS REGISTERED WITHOUT EXAMINATION.

Tallahassee, Fla., November 28, 1904.

Dear Sir—Your letter of the 25th has been received.

Section 314 of the Revised Statutes requires the State Board of Pharmacy at stated times to be fixed by them, to examine by written or oral interrogatories every person who shall desire to conduct the business of selling at retail, compounding or dispensing drugs, medicines or chemicals for medical use, or compounding or dispensing physicians' prescriptions and if a majority of the board shall be satisfied, from such examination I take it, that said person is competent and fully qualified to conduct said business above mentioned, they are required to enter the name of such pharmacist in a book provided for in the following section: All graduates of colleges of pharmacy that require a practical experience in pharmacy of not less than four years before granting a diploma shall be entitled to have their names registered by said board without examination. Physicians who are authorized to practice medicine or surgery under the laws of this State may register as a pharmacist or druggist without examination.

All persons who were engaged in business in the State of Florida as owners or principals of stores or pharmacies, in any village, town or city of more than 200 inhabitants, for selling at retail, compounding or dispensing physicians prescriptions on July 30th 1889, are entitled to register without examination.

It would seem from the foregoing that no one is entitled to register as a pharmacist in this State upon the presentation of a certificate from the board of pharmacy of another State.

The law requires an examination to be made in each case unless the party comes within the exceptions mentioned.

Dic. E. T.

Yours truly,

W. H. ELLIS.

SPECIAL SCHOOL DISTRICT.

Tallahassee, Fla., Dec. 16, 1904.

Dear Sir—Your letter of December 13th has been received.

You ask if you "can bond the school district and levy

more than three mills to pay off said bonds or will we be compelled to bond the town for building the house." The latter part of your question I will not assume to answer, that is a matter which must be determined by your town counsel, upon the advice of your city attorney. Chapter 4678 Laws of 1899 provides, for the division of the counties into school districts and for the election of school trustees and to prescribe their duties and powers, and for levying, collecting and disbursing district school taxes. The Constitution, Section 10 of Article 12 prescribes a maximum tax of 3 mills, which may be levied upon the taxable property in the district for the use of public free schools in the district, upon the conditions prescribed in the Section above referred to.

Yours very truly,

Dic. E. T.

W. H. ELLIS.

DIVING FOR SPONGE.

Tallahassee, Fla., December 16th, 1904.

Dear Sir—Your letter of the 12th asking if there is any "law forbidding sponging on the coast of Florida with diving apparatus" has been received. Section 2773 of the Revised Statutes provides that, "Whoever gathers or catches sponge in and upon any of the grounds known as sponging grounds, along the coast of Florida from Pensacola to Cape Florida, by diving either with or without a diving suit or armour, shall be punished by fine not exceeding two thousand dollars, and by confiscation of all diving suits or armour, boats and vessels used in such unlawful gathering of sponge, and in default of payment of said fine, the offender shall be imprisoned not exceeding one year." You will see therefore that your question is answered in the affirmative.

Yours very truly,

Dic. E. T.

W. H. ELLIS.

LICENSE TAX, INTOXICATING LIQUORS.

Dear Sir: Tallahassee, Fla., Dec. 16th, 1904

Your letter of December 5th enclosing one from Murray, Murray and Peak, dated November 25th has been received.

The Act of 1903, Section 8, Chapter 5106, provides that dealers in spirituous, vinous or malt liquors shall pay a license tax of seven hundred and fifty dollars in each county for each place of business. I think that this

Statute contemplates that the liquors named are of the class known as intoxicating liquors. No such tax would be required for the sale of liquors which are non-intoxicating. The letter referred to, states that the Malt Tonic Extract "will be incapable of producing drunkenness no matter in what quantities it may be consumed." If it will be incapable of producing intoxication it could not be classed with intoxicating liquors and consequently the tax referred to would not be required for the sale of such liquor.

As to whether less than two per cent of alcohol renders the beverage non-intoxicating I am unable to say. I am not aware of any rule of law in this State which would control in deciding the question. Whether the liquor is an intoxicating liquor is a question of fact and when it is sold without paying the license required by the statute, the seller must take his chances.

Your friend,

Dic. E. T.

W. H. ELLIS.

SUPREME COURT REPORTS.

Under Section 22, of Article IV, of the Constitution of the State of Florida, the Attorney General is made Supreme Court Reporter.

Volume forty-four (44) which comprises the decisions of the Supreme Court for the year 1902, has been completed and delivered. Copy for volume forty-five (45), which comprises the decisions of the Supreme Court for the January term 1903, has been in the hands of the contractor since April 1904. The copy for volume forty-six (46), which comprises the decisions of the Supreme Court for the June term 1903, has been in the hand of the contractor since November 1904. The above mentioned copy was delivered to the contractors promptly upon receipt of it in this office. The copy for volumes forty-seven (47), and forty-eight (48), comprising the decisions of the Supreme Court for the year 1904, is in this office ready for delivery to the contractor, but I have been unable to induce him to accept it before the completion of volume forty-six (46).

Respectfully submitted,

W. H. ELLIS.

Attorney General.